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reason

America at war—with itself

America at war with itself is the story of America corrupted by a political structure that pits man against man in an ever-escalating battle to achieve personal political preference: union against management, cop against kid, industrialist against consumer and ecologist, airline against charter line, puritan against freak. The legacy of such squabbles is an ever more confusing and socially disabling complex of legal restrictions. All the while political freedom slips away. For further details, please turn the page.

dedication:
Indians and those in need of forbidden pharmaceuticals are not the only victims fo the American state. State capitalism, fascism, adversely effects the blacks, the poor, taxpayers, consumers, businessmen, and any other discrete group one could think of. One issue of Reason could never begin to catalog the many artificial problems pressed on us by our political structure. So, although we speak here only of Indians and those who use, prescribe, or make pharmaceuticals, this month's magazine is dedicated to all who suffer because of an inhumane society.

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Next month: more on indians; commercialism; big business; and pirate radio.

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STOP THE WAR!

a plea for an end to America's policy of domestic imperialism

editorial

When National Guardsmen shot four students at Kent State last spring, the nation was shocked. As anti-war activists were quick to point out, when one looks at the total killed in Viet Nam, the death of a few students seems insignificant, and the national concern for their killing hypocritical.

But, in fact, as this month's feature article will begin to make clear, if mass murder can ever be considered insignificant, it is the Viet Nam war that is trivial. The real war, the one with the greatest casualties, is happening right here in America. Millions are crippled or killed every year.

If four died, in full view of the American public in Ohio that terrible day, and if dozens die a full color videotaped death in Vietnam, how many, many more expired that same spring day in our most advanced hospitals for lack of a cure for a disease, or on our highways for lack of safe transportation? Old people, wasting away in wornout bodies, and cancer victims, waiting for a cure, just don't make the front page.

No, the war is right here. Viet Nam is merely a part of it, a simple geographical extention of deadly domestic policy.

The war *–here–* is that of the U. S. government against the American people: the endless series of battles among pressure groups, politicians, commissions, judiciary, etc. for control of the mechanisms of government and, thereby, control of the lives of other people. The process isn't so overt as napalm, but it is every bit as brutal and deadly.

The list of victims includes all Americans–the children trapped in our public schools; the millions whose taxes wrest from their hands their means of survival and happiness and control of their lives; the kids whose lives and careers are ruined by the spectre of the draft or colleges that have been federally funded into mediocracy and irrelevency; the millions of slum dwellers who have been thrown from their homes for Urban Renewal or who have been turned into wards of the state by welfare. Those who have been hurt or killed by the ineptitude of the Food and Drug Administration make up only a small portion of the total. Perhaps what makes the FDA especially important among the many agencies controlling, ruining, our lives is that as long as its activities in any way hamper research into methods of preventing human death (whether chemically, biochemically, or synthetically), eventually it will get us all.

Those who wish to end either the war in Viet Nam or bloodshed in America, must realize that Mark Rudd's intentions to "bring the war home" are fraudulent. The war is already here. The alphabet soup in Washington (FDA, ICC, FCC, etc.) is the enemy, and all those who refuse to resist their own immolation (or worse, who actively endorse and participate in the process) are responsible for its continued existence. There must be millions of liberals who oppose the war and what happened at Kent. But if you ask them, you'll find a lot of them support legislation against hard narcotics or, more often, such bans as the one on thalidomide.

Either a man has a right to use his body however he pleases (as long as he doesn't violate the same right of others) or he does not. Those liberals who denounce the soldiers at Kent, who yet applaud Mitchell's valiant attempts to save the children of America from themselves, are trying to straddle a barbed wire fence.

Slowly, they are coming to the painful recognition that it is not the *type* of political structure, or who runs it, but the existence of any structure at all that is to blame for so many of the problems they have in past years concerned themselves with. Sander Vanocur, NBC newsman, for example, is quoted by Edith Efron in the July 4, 1970 issue of *TV Guide* as saying: "I am questioning some of the fundamental tenets of my past political philosophy. The question I am asking myself now is whether big government, big business, big labor are not all destructive of the human spirit. That sounds like something we used to laugh at when George Romney said it, but it's not so bad. I'm not sure any longer whether massive societies like ours can be governed from one central point."

This sort of self-questioning, to one degree or another, seems to be fairly prevalent now among liberals—and conservatives as well (viz. the anarchist-traditionalist split at the Young Americans for Freedom convention last summer). Great. The only difficulty is every day that the liberals spend rethinking their bromides the government consolidates its power at an ever faster rate. Every day new victims fall before the monster. To be sure, let those who favor politics do their thinking and do it carefully, but let them never forget that, whether in Saigon, Kent, or Bellevue, the stakes are real human lives.

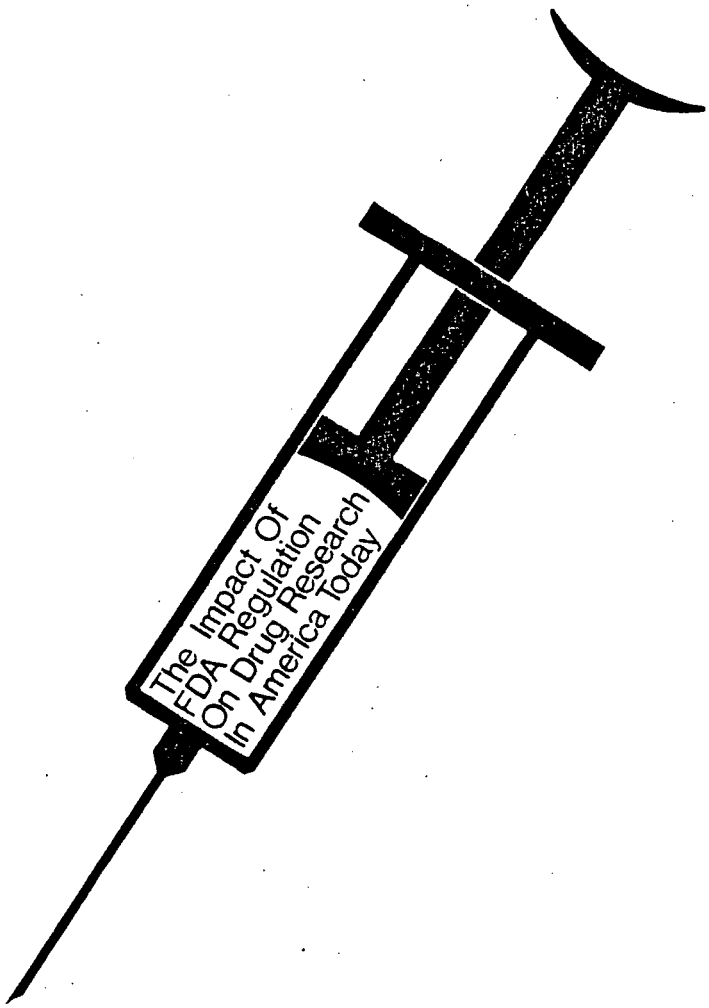
One of the more ambitious plans of some liberals to end not merely *the* war, but war *per se*, is world government. But government *is* war, and to consolidate the sanctions and equipment (i.e., guns) of the world in the hands of a single leadership is to make the warriors all the more deadly. Political hacks of the nation-states participating in the consolidation can be expected to accede to the idea only if it *increases* their effective power over their citizens. Power, after all, is what the best or worst of wars is fought over. If mutual disarmament were to aggrandize political control, it could be expected to occur; otherwise, not.

All of which is to say that world government would surely be world dictatorship. Would you expect that the leaders of either the American or Soviet State would settle for any merger that freed their citizens of American or Soviet control?

If one concedes that world government, at least in the forseeable future, would mean global enslavement, then the only question is whether such a terrible fate is preferable to the awful cruelties of war. Of course, as this magazine has often pointed out, these alternatives are not the only ones. There is the yet-to-be achieved ideal of world liberty, people entirely free of the shackles of state. But only as the liberal sees the untenability of his various solutions to the horrors of war can he be expected to wish to look beyond the self-constructed framework of false alternatives.

This is the value of such studies as that of the FDA's policies by Lynn Kinsky. There is no escaping it; the goals of the FDA simply cannot be achieved by the FDA. The agency—any agency, government in general—is not merely inefficient, but often destructive of human life. Whether more have died through the "peaceful" activities of states than through wars, I will leave to the historians to determine. For now, it is enough to know that many have been killed both ways. As I said, the war is here. End it here and you'll end it there.

Lynn Kinsky



introduction

How do you know that the drugs you take are safe? Most people, in response to these questions would reply– "Well–the *government* takes care of it. I don't have to worry . . . do I?" Few people really have any idea *how* the government goes about this task, and still less idea whether the job it does is a good one. The agency charged with the responsibility for controlling the drug industry is the Food and Drug Administration (FDA). The recent Nader report on the FDA covered only regulation of foods; the 292-page report gives strong evidence to support its charges that the FDA, having become a political rather than a scientific entity, is failing miserably at this task:

"The FDA is not a happy place for scientists to work in . . . Several researchers showed the students 'atrocity logs' in which they kept detailed accounts of 'assaults on their scientific integrity' . . . . The most common complaint was that the FDA 'constantly interferes' with medium and long range research projects, at least partly from fear that the results will embarrass the agency. The students also criticized the FDA for retaliating against scientists who disagree with its positions."[1]

In an attempt to learn whether the FDA does any better at assuring safe drugs than it does at assuring safe food, the editor of this magazine several months ago requested persons connected with the drug industry to relate their experiences in dealing with the FDA. The president of a small drug firm, among other comments, wrote the following:

"Our company, as are the others, is continually harassed on all sorts of nonsensical inspections by FDA. They take up large amounts of executive and employee time, and generally amount to nothing. The ordinary FDA inspector has become a snooper, assiduously trying to find something he can pin on a drug company at any time, with no apparent thought of the avowed purpose of FDA to cause better drugs to be sold. Thus it is necessary to stay with these boys the whole time they are in the drug plant, for once alone they will rummage through the most personal desk drawers and correspondence. Then if they get thrown out after being caught rifling someone's desk, they go to no end in attempting to pin false criminal charges on the man who threw them out, as was the

case of a friend of mine in St. Louis; they well knew that he wouldn't be convicted in court, but also knew that it would cost him many thousands of dollars which he could ill afford to spend."

This man is obviously very bitter about the way a *political* agency is controlling his business. Yet is there any alternative way of ensuring that people are not poisoned or cheated by dangerous or worthless drugs? To answer this question requires an examination of what drugs are, how they are developed, how they are marketed and prescribed, and how the FDA regulates them. Unlike many other industries, where regulations were frequently *asked* for by the established firms, the modern drug industry came into being after the federal drug regulations had already been established, primarily to deal with foods. Thus, since there has never really been an unregulated drug market in the United States, it is not surprising that few people have ever considered alternatives to the present system.

A drug can be defined as any non-caloric substance designed to produce some change of body chemistry on a molecular level in a living entity. So far as government regulatory agencies are concerned, drugs fall into two main categories: proprietary drugs, which are sold over the counter without a prescription, and ethical drugs, which are sold only by prescription. Our main concern here will be with ethical drugs.

The definition of a drug says nothing about the specific *kind* of change in body chemistry that it may produce. A drug may cure disease—or cause it, alleviate pain—or create it. Drugs may heighten or decrease or alter consciousness, abate or accentuate psychological reactions, rearrange genetic makeup, or cause death. Whatever can be done to a human body, eventually drugs could probably be created to do it.

To this date, there is no such thing as a "perfect drug." Differences in human physiology make even the most innocuous drug a potential killer for some people, while certain drugs that mean certain death for "normal" people are an absolute necessity for the survival of others. So far as physiology—and concomitant reaction to drugs—is concerned, all men are *created unequal.*

Thus aspirin, which by any standards is man's safest pain-killer, can be dangerous to a minority with a certain genetic background. And while large doses of water can cause death in a "normal" person, they mean life for the man with diabetes insipidus.

Nor are the effects of many drugs independent of dosage. Some drugs reach a plateau of dosage, beyond which further administration is useless and generally harmful. A standard dose of aspirin (.65 grams or two tablets), for example, is sufficient to reduce fever, but a larger dose won't help, and may cause gastrointestinal bleeding. Other drugs have no such plateau. The barbituates, for example, tranquilize at low levels, sedate at moderate levels, and, at high levels, produce coma and death.

Sometimes, drugs taken in conjunction with other drugs can produce results quite different from that of either drug alone. A well known example is that of alcohol and barbituates, a mixture that is an American suicide favorite.

When evaluating drugs, physicians use a therapeutic index: toxic dosage/pharmacological dosage. [2] If the ratio is large the drug is fairly safe to use; if small, the dosage must be carefully controlled. (On the other hand, some drugs take advantage of a low ratio to produce special effects. Anti-cancer drugs, with a ratio of unity, capitalize on the fact that cancerous cells absorb chemicals quicker than normal cells. The tricky and delicate work involves poisoning the malignant cells without killing the organism with the malignant cells.)

The therapeutic index is not sufficient in itself for drug prescription because, as we have pointed out, drug reaction differs from individual to individual, not only quantitatively, but qualitatively as well. One man's medicine may be another's poison. To illustrate: oral contraceptive users have a death rate of 22.3 per million woman years from thromboembolism (fatal blood clot)[3]—Diabinase (anti-diabetic drug) causes jaundice at a rate of 4 cases per 1000[4]—Chloromycetin causes fatal anemia in 1 per 225,000.[5]

Some of the factors that account for varied or unanticipated reaction to a drug include genetic differences, aging, sex, multiple or undetected disease, acquired reactions and tolerances developed from previous drugs, other drugs a patient may be taking, psychosomatic disturbances, reactions and tolerances developed from environmental conditions, such as heavy doses of various industrial pollutants, and physical states, such as pregnancy.

There are two types of adverse reactions to drugs: side effects and idosyncracies. If most people respond to a drug with an unwanted reaction, this is called a side effect. If only a few do, this is termed an idiosyncracy. What a drug firm tries to do (in theory), through research, is produce drugs that produce no side effects, while developing tests that alert doctors to the presence of genetic or other differences in patients that could produce adverse reactions. "Have you ever had penicillin before?" your doctor asks you, during a recent bedcall for the flu. He's checking to see that you don't have a sensitivity to the drug before he prescribes it.

Much current controversy and alarm centers around bad drug effects that are not immediately evident as penicillin sensitivity or blood clots from oral contraceptives. Thalidomide, one of a class of drugs known as teratogens that act directly on embryos, is a sedative, which if taken between days 20 and 40 of pregnancy, results in an infant with deformities, while the mother remains totally unaffected except for the sedation effects.

More subtle still are the mutagens[6] which attack a cell's genetic material, possibly causing cancer if somatic (body) cells are affected, or birth defects if germinal (sex) cells are affected. Among some suspected mutagens are LSD, caffein, cyclamate, sodium nitrite, and tobacco smoke components.

The problem of adverse drug reaction is a central one, not only to pharmeceutical research and retailing and the medical profession, but is the core of the rationale for the existence and activities of the FDA. People—and thus the bureaucrats of the FDA—are concerned about drug effectiveness and safety.

drug research

Every company doing research has a program detailing what type of drugs it wants developed. The programs are based on estimates of probable results, which are in turn based on accumulated research data, available personnel and their specialties, and facilities. Their decisions are also based on estimates of profitability, and liklihood of govern-

ment regulation, restriction, or delay on comestic or foreign markets.

Because of economic and technological advantages, companies often develop specialties in addition to their standard lines of research. Syntex, for example, concentrates on hormones – Smith, Line, and French, mind drugs – Sandoz, headache remedies.

Seeing the combination of a large market and the relative liklihood of producing a drug to capture that market, a company may attempt to cure some specific disease. Drugs for heart disease, birth control, mental illness, and arthritis are examples of such attempts. A cure for cancer, on the other hand, although there is a market, because so little is known of cancer's cause, would today more likely come by accident than by systematic research.

Generally, companies do not seek out cures for rare disease. Instead, most progress in this area comes either by accident or through the efforts of university research labs, which are often supported by grants from pharmaceutical firms.[7] These specialized drugs are marketed at a fraction of actual cost, the loss written off to good will, scientific reputation, and concern for human suffering. If the company can obtain a broad enough patent, other more profitable drugs produced during the same project can sometimes recap such losses.

Once an area of research emphasis is chosen, the work of the organic chemist begins. He examines what is known of successful drugs in the area of concern; he then either devises syntheses of slightly different compounds (a process known as molecular modification), or produces radically different compounds until he finds one that looks promising, which he determines via animal testing, proceeding then to further molecular modifications. Twenty-five years ago, devising a new drug was mostly a random affair often involving animal tests ("screening") on any handy chemical, often plant extracts. Today, chemistry and pharmacology have progressed to a point where rational, ordered inquiries are possible. The chemist has large quantities of data which indicate what general chemical structure a drug must have to produce a particular effect. Even so, research and development of a new drug averages about 7 million dollars and requires five or six years from conception to market.[8] Please keep these figures, five years and seven million dollars, firmly in mind, for they are extremely significant in judging the actual and probable effects of government regulation on pharmaceutical research and retail.

Once a chemist has produced a reasonable drug prospect (perhaps 30–50 a year) he sends it to the biologists and pharmacologists for animal screening. The first tests establish dose and toxicity levels in the particular experimental animal used, and provide a general idea what biological effects the drug might have. The drug is then screened for specific effect both on the basis of the results of the first series of screens and what the chemist is seeking. These specific tests can be expensive; often specially bred or modified animals and time consuming, involved procedures are required.

If the drug passes the screens, (a rare occurance), it is then subjected to long term toxicity and teratrongenic tests in several species of animal (including primates). Here is where less reputable firms have been known to cut costs and compromise safety. Only after a drug has come through this process does a reputable drug firm release it for human testing.

Under current Investigational New Drugs (IND) regulations, before humans can use the new drug, or more precisely, before a drug company is allowed to give it to them, an application must be filed with the FDA that sets forth all knowledge of the drug and includes an outline of planned investigation, a summary of investigators' qualifications, and so forth. The investigator must also promise to keep the required records, permit inspections, comply with patient-consent rules. If the proper reports are not made, or if there is any indication that the drug is unsafe or ineffective, the FDA may halt the investigation.[9] If a company halts a project of its own initiative, it must give account to the FDA.

The investigation's first step is usually to establish dose and toxicity level, with prisoners and medical students often the volunteers. Later the drug is tested on a small group of patients, primarily with their knowledge and consent (although consent is not required by either law or medical ethics if the physician doesn't think it is in the patient's best interest to know he is receiving an experimental drug), and in the final stages before full marketing the study is broadened to include a large number of physicians and patients. Once a manufacturer has established a drug's safety and effectiveness to his own satisfaction, he can file a New Drug Application with the FDA and see if it meets their acceptance. The material of an application can fill several volumes. In the past, processing time for a NDA was several months, but, as paperwork piles up, it is increasing. The quantity of new drugs receiving approval each year, therefore, whether original formulations or combinations of old drugs, or molecular modifications of patented drugs, is dwindling.[10]

history of the FDA

The FDA was created in response to the greed or dishonesty of many 19th century food producers and the ability of modern science to both aid them and expose them. As the transportation network grew in the U.S. after the Civil War and canned and packaged foods became more common, the manufacturer became more remote from his customers both in physical distance and in the complexity of production. Science provided chemicals to change flavors, prevent spoilage, enhance colors, etc., and while these made possible the enjoyment of all foods in all places, regardless of season, they also made fraud much easier. Strawberry jam could be made without strawberries, rotten eggs could be deodorized, and rancid butter could be revived.[11] Not surprisingly the first pressure for anti-adulteration laws came from farmers who saw their market for real eggs, butter, etc. cut by the cheaper fraudulent stuff—state and federal departments of agriculture soon hired chemists to detect product fraud. One of these chemists—Harvey Washington Wiley—proved to be a real crusader, making even Ralph Nader pale by comparison. Through speeches, books, and sheer force of personality he managed to unite the consumers (who were fearful of fraud and poison) and the manufacturers (who feared the competition of the adulterers and sensed the public's growing mistrust of all producers) behind several omnibus food and drug bills culminating—largely as a result of Upton Sinclair's novel *The Jungle*[12]—in the Pure Food and Drugs Act of 1906 (also known as the Wiley Act). This Act established the FDA, with Wiley as its director, to protect the consumer from injury, deception, and fraud: it had wide police powers to induce compliance with the law (which was amended freqently, always in the direction of greater control). Dr. Wiley didn't stay with the FDA for very long—in

1908 he conducted some research which proved to him that benzoate of soda and saccharin were harmful and he requested President Roosevelt to ban their use in food and drugs. President Roosevelt had used saccharin himself—"President Roosevelt characterized Dr. Wiley's position in these words: 'Anybody who says saccharin is injurious to health is an idiot.' "[12] and he designated a board to run the FDA. (Dr. Wiley joined the staff of *Good Housekeeping* magazine.)

The next major revision of the Food and Drug Act came in 1938, again after a period of crusading, led mainly by Consumers' Research organization and the FDA itself. But the S. E. Massengill Company of Tennessee is general conceded most of the credit—in 1937 their "Elixir of Sulfanilamide" came on the market, and while their chief chemist had tested the mixture of diethylene glycol (a relative of permanent antifreeze) and sulfanilamide for appearance, flavor and fragrance, he had neglected to test it for safety: 107 people, mainly children, died from the 11-3/4 gallons dispensed (the chemist made it 108 with his suicide). The FDA seized the rest of the manufactured supply because it was falsely labeled—elixir implies an ethyl alcohol solution. The 1938 revision, therefore, "required a manufacturer to test any new drug for safety and report the result to the Food and Drug Administration. The agency also was authorized to remove from the market a drug it could prove to be unsafe."[14] In addition the FTC and FDA were empowered to regulate patent medicine advertising to prevent false or misleading claims.

The most recent major amendments were those introduced by Kefauver and Harris in 1962. Among other things they required that a drug be shown by the manufacturer to be "substantially efficacious" as well as safe; the FDA, however, was denied the power to sit in judgement of efficacy—the law dealt only with the quantity of evidence a manufacturer must supply before marketing a new drug. A far-sighted observer commented at the time: "Once more we find the Congress refusing to abridge the basic philosophy of our drug law by recognizing again that in the long run the physicians of this country must be the judges of a drug's efficacy and of its safety. The Congress, however, has not stopped [the FDA's usurpation of power] and we can certainly look forward to further expansion by the FDA of its jurisdiction in opinion areas, through the promulgation of regulations and various other administrative techniques including the use of the vast punitive sanctions that are at its disposal."[15] In 1966 the FDA had the National Academy of Sciences and the National Research Council (a group of scientists but *not* M.D.s or pharmacists) review nearly 7000 *previously licensed* drugs for effectiveness. By 1969 the HAS-NRC evaluation was completed and at least 90 drugs were ordered to be withdrawn from the market, with many others being severely restricted in their advertising, despite the fact that physicians had been prescribing them for years. In essence the FDA *is* practicing medicine, Congress not withstanding.

In taking these drugs from the market the FDA is using some of the strongest enforcement powers of any government agency. "For any given violation of the Food, Drug and Cosmetic Act, the FDA has a variety of enforcement, weapons, from a mere suit for an injunction to an outright seizure of the offending drug before trial and even to criminal prosecution. These remedies can be invoked whether or not the drug itself is safe and effective in fact, for the manufacture of a safe and effective drug by unapproved methods or its marketing with unapproved labeling or advertising is sufficient to violate the Act, whether or not the violation is intentional."[16] The FDA can't lose—a drug manufacturer can't make a cent without the FDA's approval, and he'd better think twice before fighting the FDA, no matter how arbitrary the sanction they have brought against him. In addition those few with the temerity to take the case to court really haven't much chance to win—between 1938 and 1964 only one manufacturer requested a hearing to protest the withdrawal order of a previously approved prescription drug—he lost.[17] (The FDA has very persuasive lawyers—what judge wants to be responsible for thousands of deaths if he OK's the drug against the FDA's judgement?)

the costs of FDA protection

The FDA, like many government bureaus, represents a basically sound idea—protection against fraud—perverted by means of poltical power into a fiefdom which literally *rules* the drug industry, arbitrarily deciding what products to approve and disapprove. Certainly there is a consumer demand for information on the relative safety and effectiveness of drugs; but are the FDA's coercive methods the proper way to provide this information? Emphatically not.

The most important defect lies in the very nature of the FDA as a *political* entity. As such, entrusted with the absolute power of the state, the FDA is subjected to a vast assortment of competing pressures—from Congress, consumer organizations, and drug firms—in the hope that it will come up with a set of rules and regulations which precisely define which drugs are "good" and which are "bad". Yet, as has been shown previously, there exists no preordained dividing line of this sort; the nature of drugs and the nature of human physiology are such that the effectiveness of *any* drug must be described as a continuum or frequency distribution, from "very harmful" though "no effect" through "very beneficial," depending upon the individuals' unique biochemistry, state of age and health, the size of the dosage, etc. Experimentation can and does establish the nature of this distribution of effects; given this knowledge and data on the particular patient in question, the physician can weigh the benefits and risks, and decide on an *individual* basis whether or not it is wise to administer the drug.

But the FDA does not operate in terms of individuals—its concern is with the "public interest," i.e., the supposed welfare of the "population as a whole." For this reason, despite the fact that it is impossible, the FDA seeks to define and enforce a black-and-white judgement that a drug is either "effective" or "ineffective." Attempting to put this impossible aim into practice results in several characteristic modes of FDA behavior:

1

The uppermost concern of the bureaucratic mind is rules and procedures, expressed in countless official forms and paperwork. The inference, in the FDA's case, is that if the bureaucrat does not know how to ensure that a drug is "effective," the next best thing is to require such a mountain of paperwork that the bureaucrat is "covered" at every possible turn. As a result, since the FDA began requiring "effectiveness" documentation, the length of time it takes to get a New Drug Application processed has *tripled*.[18] Preparing the monumental paperwork adds millions of dollars to a drug firm's research budget—which has the effect of discouraging smaller (perhaps more innovative) firms from even attempting

to get new drugs approved. In 1968 only 14 new drugs were approved, compared with 63, 45 and 41 in 1959, 1960 and 1961,[19] the last three years before the "effectiveness" requirement went into effect.

2

A second characteristic of this mentality is the FDA's strongly conservative position with respect to radically new drugs. Since the FDA's black or white verdict on effectiveness is taken by most people as the last word, the bureaucrats are naturally very cautious about which drugs they will "endorse." Thus, promising new drugs which come from sources other than the most prestigious companies or which are based on fundamentally new principles are extremely suspect in the FDA's view. The cases discussed here further on provide some indication of the serious effects of this policy in keeping new drugs from people who would willingly assume the risks associated with their use.

3

The third aspect of the FDA's mentality is merely the ultimate consequence of its simplistic good/bad view of drugs —the forcible intervention in the marketplace to prevent the sale or use of "bad" drugs. The FDA has absolute, unchallengeable power to declare illegal the manufacture, sale, or use of any drug which it deems ineffective by its arbitrary general welfare standards. This means that the essential scientific and medical judgement of the doctor and patient as to the value of a particular drug in a particular case is thrown aside in favor of a government decree, backed up by force. The following cases illustrate the effects of this policy.

krebiozin

There is little point in debating the by-now familiar story of cancer victims and their doctors vs. the FDA over the issue of whether this alleged wonder drug is or is not an effective cancer treatment. The FDA claimed that the developers of krebiozin were quacks and that the drug is worthless; a number of cancer victims have claimed otherwise. It is true that krebiozin was developed by a group of non-pretigious researchers; it is also true that they did not go through the FDA's paper mill of documentation. Nevertheless a non-trivial number of cancer patients claimed that the drug had substantially benefited them. Thanks to the FDA, however, krebiozin is now illegal.

DMSO

Within the last several years another case similar to krebiozin's has developed, this time more significant because the benefits of the drug—dimethyl sulfoxide—are extremely well documented. Again as with krebiozin, DMSO was not discovered by a large pretigious drug firm; it is a common commercial solvent, a byproduct of pulp manufacture, whose medicinal properties were first discovered in 1963 by Robert Herschler of Crown Zellerbach Corp. and Dr. Stanley Jacob of the University of Oregon Medical School. DMSO is applied directly to the skin, rather than orally or by injection; its effectiveness is well-documented for treating bursitis, arthritis, scleroderma (a fatal skin-hardening disease), and useful as a local anesthetic. Most important, there is strong evidence that DMSO is effective against leukemia, cervical cancer, and possibly other types of cancer.[20]

Without warning, however, on Nov. 25, 1965, the FDA banned all clinical testing of DMSO, due to the fact that laboratory dogs, rabbits, and pigs developed changes in the lenses of their eyes when fed huge doses of DMSO. No such changes were found in the eyes of rhesus monkeys, nor in any of the many human patients who had received the drug. No animals developed lens changes when the DMSO was applied to their skins, as it had been with humans, rather than being given orally; moreover, the humans received only 1% of the proportional dose which caused the animals' lens damage.

But to the bureaucratic mind in its impossible quest for certainty DMSO was a *dangerous* chemical (i.e. one which the bureaucrats might conceiveably be blamed for someday). It was not until a year later, after DMSO was regularly used in Germany and Austria, that the FDA backed off slightly and allowed limited testing to be resumed—under stringent FDA controls requiring each study to be specifically approved in advance. DMSO's developer, Dr. Stanley Jacob, commented, "Under the current law and its interpretation, were the cure for cancer discovered tomorrow, it would not be available as a prescription drug in the United States for at least seven years. How many people would needlessly die of cancer while the drug was going through FDA red tape?"[21]—if in fact it made it through at all.

thalidomide

Everyone is aware of the FDA's heroic actions in saving America from the deformed babies produced when the tranquilizer is given to pregnant women. Very few people, however, realize the full impact of the FDA's action in this case. The FDA did not merely warn pregnant women; it enacted and enforces a total ban on the sale of thalidomide within the United States—to anyone, male or female, married or single, young or old, for many of whom thalidomide might be the optimum tranquilizer.

But a recent Associated Press story reveals an even more important use of thalidomide which is being kept from the public by the FDA; it appears that thalidomide is useful in treating leprosy. Under a special FDA exemption, with thalidomide donated by the Merrell Co., doctors at the U.S. Public Service Hospital in Louisiana have reported "very successful results" in halting or arresting extreme leprosy reactions which lead to the crippling, deformity, and paralysis associated with the disease. So far the drug has been used on only 22 patients. "If we had sufficient quantities, we probably would use it in more cases," reports Dr. John R. Trautman, the hospital director.[22] The article goes on to say that "the doctors decided to use thalidomide on the basis of other evidence *from other countries* that the drug, despite its bad reputation, is beneficial in halting leprosy reactions." (Italics added) "We shouldn't let something like [the fetus deformities] throw out a medicine completely," states Dr. Carl D. Enna, chief of the hospital's clinical branch.[23] Yet for the duration of the *five year* Louisiana study, thalidomide will continue to be totally banned, everywhere else in the U.S. And people with leprosy will continue to suffer unnecessarily.

oral contraceptives

Despite the emotionalism of the recent Senate hearings on the Pill, the fact remains that pregnancy is over *ten times times* more dangerous than treatment with oral contraceptives (based on all available figures of comparative death rates per million people).[24] Despite this, in recent years the FDA has imposed more stringent requirements on oral contraceptives than on virtually any other drug. For example, toxicity studies with very high daily doses must be made for seven years in dogs and ten years in monkeys before any female contraceptive agent can be tested on humans. This, despite the opinion of many researchers, including the World Health Organization

Scientific Group,[25] that extrapolation of experimental animal data to human females is of questionable value when dealing with contraceptives—due to the animals' different sex cycles and the difficulties in defining comparative dosages. Dr. Carl Djerassi, one of the pioneers of oral contraception, reported last October that these FDA requirements "have resulted in the recent discontinuance of at least two clinical trials of promising compounds. Even more serious is the fact that, as a consequence, this experience with FDA's practical power to determine scientific protocol has led one of the largest of American drug companies (which does not market any contraceptive agent) to discontinue virtually all research on contraceptive agents chemically related to female steroids."[26] Dr. Djerassi adds, "There is little doubt that if the present climate concerning clinical testing of contraceptive agents had existed 15 years ago, none of the steroid oral contraceptives now being used would ever have been developed."[27]

We may never know how many other promising, life-saving drugs have been held up or cancelled because of the FDA. Suffice it to say that the overall effect of all of the FDA regulations and legal weaponry is to make a manufacturer think several times before even taking a drug out of his lab. Why should he go through the bother of filling out the huge IND forms, the even larger NDA forms, pay for testing, manufacturing, and advertising?—His drug stands a slim enough chance in the very competitive drug field anyway without having to face constantly expanding regulations and police powers. Many companies handle the problem by canceling a drug rather than developing it;[28] others seek out less regulated foreign markets[29]—either way patients and doctors in the U.S. lose a chance to try a new and possibly better drug.

some thoughts on an alternative

The most subtle—and perhaps most damaging—aspect of FDA regulations is not their effects on the drug industry, but their effects on the general public and physicians. Everyone, including the doctors, feels that "someone" is seeing to it that drugs are safe and production standards high. The result is an uncommon amount of ignorance and misplaced trust. As Morton Mintz points out in *Therapeut. Nightmare* (a very pro-regulation book), the FDA simply isn't doing the protecting that everyone assumes it is. Thalidomide was their big and nearly only coup.

As has been pointed out, fraud is a proper concern of the law; whether the specialized knowledge required to deal with drug fraud implies the need for a special, full-time agency (rather than merely allowing suits against the drug companies), is an interesting question which this article will not attempt to cover. What is of concern, however, is to investigate how an unregulated market could deal with the issue of relative safety and effectiveness.

In his article, "The Assault on Integrity,"[30] Alan Greenspan points out that reputation is a major tool in an unregulated economy and that manufacturers would vie to have a reputation for honest dealing and quality products. Unfortunately he chose the drug industry as his example: even in a free economy this industry is one of the least amenable to rating by the consumers. Specialized knowledge is needed in order to judge the quality and purity of the product; the consumer is generally using the product under orders from someone else (i.e., the doctor), and in many cases, he may not be in a condition to make a carefully-reasoned judgement—he may be sick or frantic with worry about someone else who is. This does not excuse the consumer, particularly one with chronic medicinal needs, from being as well informed as possible (most people today can't even identify by name what they are taking let alone know what side effects to be alert for or what to do in case of accidental overdose); this suggests, however, that for the purposes of judging drugs the doctors are the ones who count as consumers. This is certainly true today when drugs can only be gotten via a doctor's prescription (and the doctors are the objects of all prescription drug advertising), but even in an unregulated market most people still would go to a doctor simply because he has the specialized knowledge and they do not (just as people currently consult lawyers even though a lawyer is not officially required in most cases). Certainly then it would be in the doctor's interest, as a man of professional integrity and also as a businessman who wants to keep customers, to prescribe the best drugs he could.

At the present time the doctor gets most of his information through drug company salesmen, the *Physician's Desk Reference* (the PDR)—in which drug companies do their own product write-ups, the AMA's *New and Non-Official Drugs* (produced once a year by the Council on Drugs), or, if he has the time in his busy practice, from journal articles and letters. It should be obvious that over half of his information is coming from a biased source—the companies themselves. It is common (in some groups) to think of all industrialists as virtuous capitalists, and many are; but it must also be remembered that the FDA was originally set up with the legitimate function of detecting fraud and mislabeling, and even in recent years some drug companies (e.g. Merrill in the case of MER/29) have been convicted of falsifying data and suppressing knowledge of severe drug reactions.

What is needed, and what would almost certainly exist in the absence of the FDA, is an independent agency similar to Consumer's Union that would evaluate company claims and tests, run tests of its own where necessary, keep abreast of the medical literature, collect physician reports of drug reactions (the AMA is currently working on a computerized system), and then dispense the information to its subscribers (or members, if the AMA were to expand its Council on Drugs). Certainly it would be in the interest of physicians and some laymen to use such a service. In today's regulated environment, in which the government is presumed to be taking care of everything, only *one-eighth* of all U.S. physicians subscribe to the one modest newsletter which reports systematically on drug side-effects.[31] The fortnightly, nonprofit "Medical Letter" costs only $12.50 per year and has established an excellent reputation—but most doctors continue to rely on company sales brochures and the FDA as their primary sources of information.

Such is the pervasiveness of government regulations and the mentality that trusts them—it is no wonder that people scream that if the FDA were to be abolished we'd all be poisoned: if people were to continue to use so little caution and intelligence in selecting drugs and physicians to advise them, that could very well happen. Any industry needs an incentive for excellence if the thugs are not to take over. The FDA provides an incentive based on fear, via a government-backed gun. If the FDA were abolished, physicians and consumers, by means of testing labs and computerized information systems, could provide an incentive based on reputation. Doctors and patients would at last be free to

make their *own* decisions about what risks to take in using a particular drug, free of government coercion. And one's full ownership of his body would advance another step towards being a legal reality.

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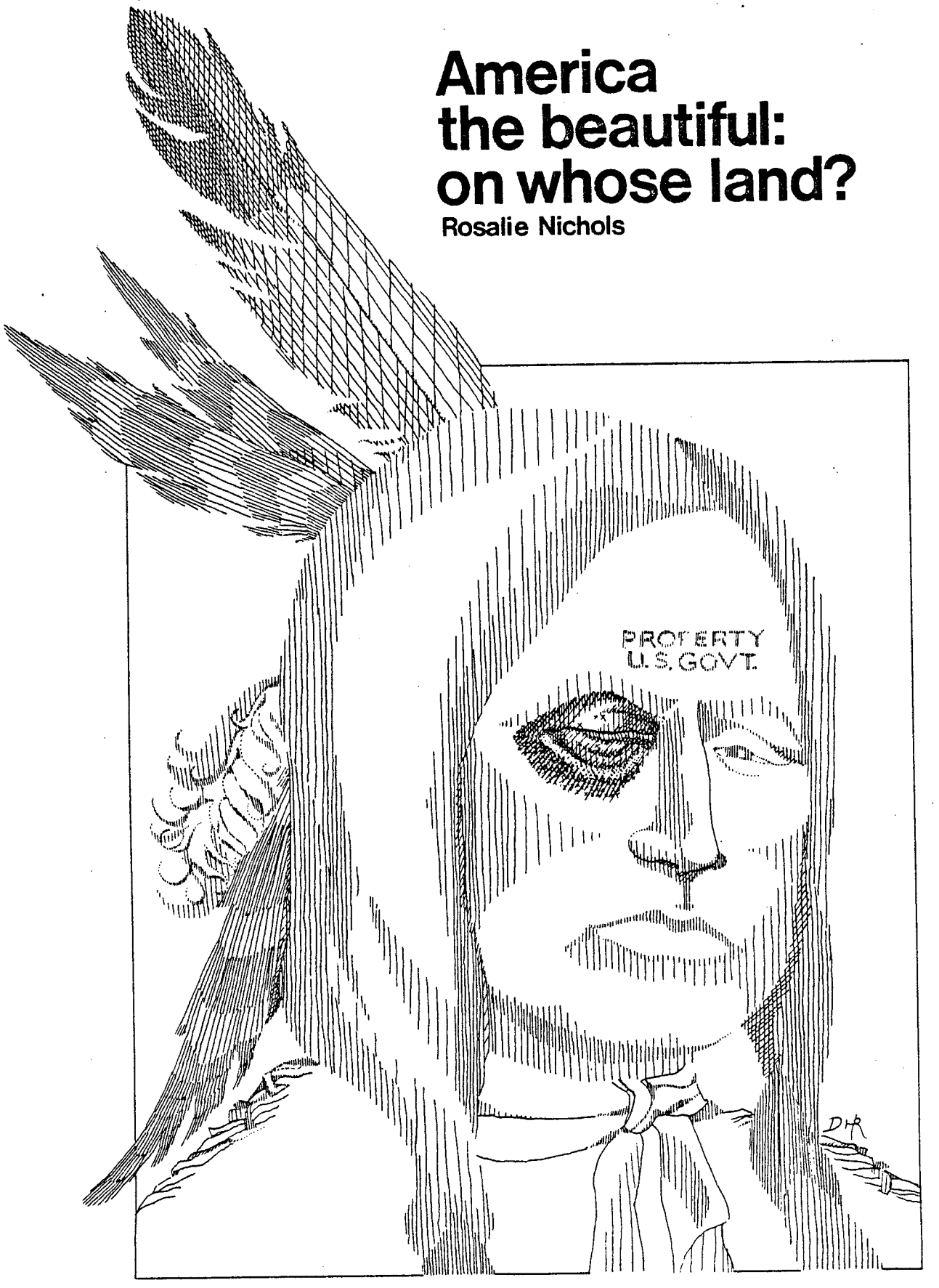

The purpose of this article is to examine certain inconsistencies in the thinking of political conservatives and libertarians with respect to the property rights of the American Indians.

definitions

The term "libertarian" is defined as "one who holds to the doctrine of free will" and "upholds principles of liberty."[1] There is a proliferation of libertarians at present, ranging from conservatives to Christian libertarians to Objectivists to anarcho-capitalists to autarchists to anarcho-socialists. Even William Buckley claims to be a "libertarian," in spite of the fact that he supports the military draft, which is one of the worst violations of individual liberty. Libertarians in general, however, believe in the individual right to life, liberty and property, and they desire either (1) to reduce the government function to protecting these rights or (2) to establish a system of multiple, competing governments or (3) to abolish formal government entirely and establish individual self-rule.

The term "conservative" does not refer to any explicit, consistent political philosophy but designates merely support of the status quo. Since the status quo has a way of changing over a period of time, so, too, does the position taken by conservatives. In European history, conservatives were originally royalists or monarchists and came to be termed "rightists" because of the practice of seating monarchists to the right of the presiding officer in the legislature. Liberal or radical members were seated to the left of the presiding officer and so became known as "leftists." Thus, at that time, conservatism stood for support of "benevolent despotism" (a contradiction in terms), and liberalism stood for democratic *or* republican thinking. In late 19th Century politics in the United States, Liberal Republicans advocated laissez-faire (complete separation of government and economics) and wished to abolish such special privileges as protective tariffs, subsidies, inflation, and land grants, while conservatives favored the continuance of government manipulation of the economy.

At the present time, conservatives profess to believe in individual rights (especially property rights) and "free enterprise" (a euphemism for "laissez-faire," which has become an emotionally-laden word for most people). The conservatives generally base their belief in individual rights on religious ideas—rights are "God-given" or are based on natural laws designed by God. They usually also believe in free will, since without the freedom to disobey God, there would be no logical explanation for the existence of evil and no basis for personal salvation or damnation. (Note: One does not have to believe in God to believe in free will, but it is true that free will is the necessary theoretical foundation of morality.) There is an inherent contradiction in the use of the term "conservative" to designate the above set of beliefs: One cannot support the status quo and laissez-faire at the same time, since we do not live in a laissez-faire society. Indeed, radical changes would be needed to bring about a laissez-faire society, if such were desired. Conservatives apparently fail to recognize this contradiction, however, and so go on calling themselves conservatives and not admitting that what they really support is far from laissez-faire.

law and order

One symptom of the conservative's commitment to the status quo is an over-emphasis on "law and order"—the strict enforcement of law because it *is* law, without reference to whether it is right. Conservatives place the preservation of order above considerations of freedom and justice. An unusually explicit statement of this position was contained in a recent article by a young conservative:[2]

"Order is the *primary* consideration in political science: it is needed for human existence. Anarchy is a contradiction of reality and is soon ended by the re-establishment of order. Order and precipitate change are enemies; or order and chaos are opposites. Change, if slow and gentle, and in the right direction, will enhance order; if rapid and harsh and in the wrong direction, will precipitate chaos. It is by appealing to *tradition,* by saying that this is the way public affairs have *always* been handled, that conservatives seek to preserve *order* and conserve what *is.* It is be scorning tradition that those who wish to accomplish revolution begin . . .

"The need for a stable, *unchanging public order* is in the nature of things, and where that order is not preserved by reverence for the Fathers, by "pious awe" and "trembling solicitude," *it will be enforced by naked power."* (Emphasis added)

Note that this writer has completely abandoned the order of *natural* law (human freedom, individual rights, free trade) in favor of *public* order (i.e. government), which is to be preserved by *force* (if brainwashing fails) in order to maintain whatever *is,* not what morally *ought to be.* It is in this spirit that, during the recent Indian occupation of Alcatraz Island, another young conservative wrote to the *Stockton Record* (Dec. 7, '69), "The fact is that a band of long-haired renegades has illegally seized federal property, has blatantly defied the law of our land . ." When it was pointed out to him by private correspondence that the land originally belonged to the Indians, had not yet been paid for, and therefore was still rightfully their property, he asked, *"By whose legality* is this assertion being made?"

The issue, of course, is not one basically of *legality* but of *morality.* Legality changes from time to time depending on the lawmakers. But morality is based on objective reality and does not change at the whim of politicians and judges. The Indian issue ought to be viewed from the standpoint of man's natural and unalienable rights to life, liberty, and property. Indians are human beings and have the same rights as Caucasians. The American Indians, by virtue of being the first users and occupiers of the continent, were its rightful owners. The Europeans, including Spanish, French, English, and others, invaded the American continents, initiated force against the native inhabitants, stole their land, took many lives, and deprived the survivors of liberty by slavery and confinement to reservations. Whenever the Indians resisted or retaliated, they were put down by superior force of arms. Fraud also was used by the European invaders to obtain land that they could not obtain by voluntary consent.

Even from a legal standpoint, however, the Indians have a valid claim to their lands. The United States officially recognized Indian ownership of the lands in the Northwest Territory Ordinance of 1787, which stated: "The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress . . ." The United States further made treaties with the various Indian tribes. In California, treaties were made in 1850 at the time of admission to the United States, and the Indians were promised payment for

their lands. They were not paid at that time and still have not been paid to this day. After many years, the Indians were finally given permission to sue the federal government for payment on their treaties, and in California, a settlement was recently made for 47¢ an acre. (Where in California is there an acre of land worth only 47¢?) Even this amount, however, has not yet been paid, so there is a legal basis for maintaining that the California Indians still own Alcatraz. From a strictly legal standpoint, there is also the Fort Laramie Sioux Treaty of 1868 which provides a legal basis for Indian reclamation of surplus federal land. From any standpoint, the Indian claims are based not on past ownership alone, but on present ownership.

Strictly speaking, even payment on the treaties will not clear government or other non-Indian title to Indian land, since contracts made under duress are not binding. For example, if a man held a gun to my head and forced me to sign over the "pink slip" to my automobile, with or without compensation in any amount, this would not be a moral or legal transfer of ownership, and I would be entitled to reclaim my property at the first opportunity. *Ownership does not change when property is taken by force.* If this same man who stole my automobile were to give it to his son, it would still be *my* automobile. And if possession passed to his son's son and so forth, it would still be *my* automobile, even though from a practical standpoint it might become difficult to trace and claim. *Possession is not ownership.* Possession can be taken by force, but *ownership can be transferred only voluntarily.*

origin of ownership

There are, of course, some conservatives who would go so far as to deny that the Indians ever actually *owned* the land that they inhabited for some 25,000 years or more. In some cases, this is again the result of narrow legalistic thinking, as, for instance, when I was once asked whether the Indians had a *deed* to North America! Who should have issued them one, I don't know, unless it was the buffalo. More often, however, denial of Indian land ownership is based on a false idea of how original ownership should be established. Ownership, according to the champions of advanced technology, is established by *cultivation* of the land. This is a theory that was expounded by John Locke (1632-1704) in his *Two Treatises of Government* published in 1690. Because Lock's writings are the very pillar of Anglo-American libertarian thinking, his chapter on property will be quoted in length here:[3]

"God, who hath given the World to Men in common, hath also given them reason to make use of it to the best advantage of Life, and convenience. The Earth, and all that is therein, is given to Men for the Support and Comfort of their being. And though all the Fruits it naturally produces, and Beasts it feeds, belong to Mankind in common, as they are produced by the spontaneous hand of Nature; and no body has originally a private Dominion, exclusive of the rest of Mankind, in any of them, as they are thus in their natural state: yet being given for the use of Men, there must of necessity be a means to appropriate them some way or other before they can be of any use, or at all beneficial to any particular Man. The Fruit, or Venison, which nourishes the wild Indian, who knows no Inclosure, and is still a Tenant in common, must be his, and so his, i.e. a part of him, that another can no longer have any right to it, before it can do him any good for the support of his Life.

"Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a Property in his own Person. This no Body has any Right to but himself. The Labour of his Body, and the Work of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joyned to it something that is his own, and thereby makes it his Property. It being by him removed from the common state Nature placed it in, hath by this labour something annexed to it, that excludes the common right of other Men. For this Labour being the unquestionable Property of the Labourer, no Man but he can have a right to what that is once joyned to, at least where there is enough, and as good left in common for others.

"He that is nourished by the Acorns he pickt up under an Oak, or the Apples he gathered from the Trees in the Wood, has certainly appropriated them to himself . . . We see in Commons, which remain so by Compact, that tis the taking any part of what is common, and removing it out of the state Nature leaves it in, which begins the Property; without which the Common is of no use. And the taking of this or that part, does not depend on the express consent of all the Commoners . . .

"But the chief matter of Property being now not the fruits of the Earth, and the Beasts that subsist on it, but the Earth it self; as that which takes in and carries with it all the rest: I think it is plain, that Property in that too is acquired as the former. As much Land as a Man Tills, Plants, Improves, Cultivates and can use the Product of, so much is his Property. He by his Labour does, as it were, inclose it from the Common. Nor will it invalidate his right to say, Every body else has an equal Title to it; and therefore he cannot appropriate, he cannot inclose, without the Consent of all his Fellow-Commoners, all Mankind. God, when he gave the World in common to all Mankind, commanded Man also to labour, and the penury of his Condition required it of him. God and his Reason commanded him to subdue the Earth, i.e. improve it for the benefit of Life, and therein lay out something upon it that was his own, his labour. He that in Obedience to this Command of God, subdued, tilled and sowed away part of it, thereby annexed to it something that was his Property, which another had no title to, nor could without injury take from him . . .

"God gave the World to Men in Common; but since he gave it them for their benefit, and the greatest Conveniencies of Life they were capable to draw from it, it cannot be supposed he meant it should always remain common and uncultivated. He gave it to the use of the Industrious and the Rational, (and Labour was to be his Title to it;) not to the Fancy or Covetousness of the Quarrlesome and Contentious. He that had as good left for his Improvement, as was already taken up, needed not complain, ought not to meddle with what was already improved by another's Pains, which he had no right to, and not the Ground which God had given him in common with others to labour on, and whereof there was as good left, as that already possessed, and more than he knew what to do with, or his Industry could reach to . . .

"The same measures governed the Possession of Land too: Whatsoever he tilled and reaped, laid up and made use of, before it spoiled, that was his peculiar right; whatsoever he enclosed, and could feed, and make use of, the Cattle and Product was also his. But if either the Grass of his Inclosure rotted on the Ground, or the Fruit

of his palnting perished without gathering, and laying up, this part of the Earth, notwithstanding his Inclosure, was still to be looked on as Waste, and might be the Possession of any other. . .

"Men, at first, for the most part, contented themselves with what unassisted Nature Offered to their Necessities: and though afterwards, in some parts of the World, (where the increase of People and Stock, with the Use of Money) had made Land scarce, and so of some Value, the several Communities settled the Bounds of their distinct Territories . . . . yet there are still great Tracts of Ground to be found, which (the Inhabitants thereof not having joyned with the rest of Mankind, in the consent of the Use of their common Money) lie waste, and are more than the People, who dwell on it, do, or can make use of, and so still lie in common. Tho' this can scarce happen amongst that part of Mankind that have consented to the use of Money."

Note that Locke's argument is based not simply on *use* of the land for livelihood, but on *cultivation,* on taking it out of the "state of Nature". Note also his references to God's injunction to man to subdue the earth. This comes from Genesis 1:28, "And God blessed them, and God said unto them, Be fruitful and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth." (This one Bible verse was to have disastrous effects not only on the whole race of American Indians, but on other native races as well.) Note further Locke's reference to uncultivated or unharvested land as "waste" and his assertion that "wasted" land might be taken possession of by others. Note finally that Locke made ownership conditional on there being "as good left" for others.

John Locke was not the first to use Genesis as an argument for expropriation of land. Even before him, John Winthrop had written:

"The whole earth is the lords Garden & he hath given it to the sonnes of men, with a generall Condition, Gen: 1:28. Increase & multiply, replenish the earth & subdue it, which was againe renewed to Noah, the end is Double morall & naturall that man might injoy the fruites of the earth & god might have his due glory from the creature, why then should we stand hear striveing for places of habitation . . . and in ye mean tyme suffer a whole Continent, as fruitfull & convenient for the use of man to lie waste without any improvement."

On the other hand, it was the viewpoint of that radical libertarian of the colonial period, Roger Williams, that, although the Scriptures command the tilling of the earth, they contain no statestatement whatever that the agriculturist has the right to expropriate those who do not till it.[5]

Washington Irving, in *Knickerbocker's History of New York,* pointed out that the "savages" could have pleaded that "they drew all the benefits from the land which their simple wants required . . and that as Heaven merely designed the earth to form the abode, and satisfy the wants of man, so long as those purposes were answered, the will of Heaven was accomplished." But the counterargument attributed to the Puritans by Irving was that "this only proves how undeserving they were of the blessings around them — — they were so much the more savages, for not having more wants." Accordingly, then, the white Christians "were but taking possession of what, according to the aforesaid doctrine, was their own property — — therefore, in opposing them, the savages were invading their just rights, infringing the immutable laws of Nature, and counteracting the will of Heaven."[6]

In a brilliant and entertaining chapter on "The Destined Use of the Soil," Albert K. Weinberg has traced the history of this set of ideas through the expansionist, or imperialist, period of the United States — — which is to say, throughout its entire history — — up to the New Deal period when his book *Manifest Destiny* was written. Regarding the need for a rationale such as has just been described, he points out that:[7]

". . . an expansionist society 'never admits that it is doing violence to its moral instincts' and is least disposed to do so when this violence is condemned by others. Thus in a congressional debate of 1830 an advocate of Indian removal contended with apparent sincerity that he had 'advanced no principle inconsistent with the most rigid morality.' So little, indeed, had the principles advanced appeared immoral to their exponents that the ultimate authority for them was ascribed to God. The principles centered in a philosophy of the soil. The white race seemed to Senator Benton to have a superior right to land because they 'used it according to the intentions of the Creator.' The theory that a use of the soil was ordained by God or morality figured not only in the entire history of Indian relations but also in all issues in which Americans found themselves desiring soil occupied by an 'inferior' race."

The hypocrisy underlying the "use of soil" rationale for expropriating the Indians was in no case more clearly revealed than in the removal of the Cherokees from their homes. By 1830, the Cherokees had taken up farming, invented their own written alphabet, set up public schools, adopted a written constitution providing for a government with legislative, judicial, and executive branches, and made great improvement in their condition. Following the discovery of gold on Cherokee land and the election of President Andrew Jackson, famed as an Indian fighter, the State of Georgia passed a law "annexing" all Cherokee lands within the state, nullifying the laws of the Cherokee Nation, and prohibiting Indians from testifying in court against white men. The apologists of expansionism were hard put, however, to come up with an acceptable rationale for this action. As ex-President Madison wrote to William Wirt:[8]

"The plea with the best aspect for dispossessing Indians of the lands on which they have lived, is that by not incorporating their labour, and associating fixed improvements with the soil, they have not appropriated it to themselves, nor made the destined use of its capacity for increasing the number and the enjoyments of the human race. But this plea, whatever original force be allowed it, is here repelled by the fact that the Indians are making the very use of that capacity which the plea requires . . ."

At this point, historian Weinberg comments as follows:[9]

"It may seem that, despite the extraordinary talent of homo sapiens in justifying his desires by his reason, there must certainly be some few issues in which moral reason is so strongly against him that elementary logical integrity will force him to relinquish his desire, or at least to admit that the gratification of it is without moral justification. Doubtless even the history of expansionism contains such instances; but, contrary to natural expectation, we have not at this point come upon one of them."

What possible argument, then, could the Georgians invent? It is revealed in part by the following excerpt from Gov. Troup's message to the Georgia Assem-

bly:[10]

" . . . with regard to the territory of Georgia. . . this right of use can only be construed to mean, what in all the treaties it did mean, the right of use for hunting. When, *therefore* the United States, by changing the mode of life of the aboriginals upon the soil of Georgia, changed *essentially this right*, and caused her lands to be separately appropriated for the purpose of tillage, and gave every encouragement to fixed habits of agriculture, they violated the treaties in their letter and spirit, and did wrong to Georgia."

The Georgia Assembly, in a fit of altruism, followed up with a statement that "a dispersed and wandering people are not in a condition to become the object of the benefits of civilization," whereas their removal to western lands would "give to these sons of nature a wilderness congenial to their feelings and appropriate to their wants." One Senator even urged that a wild Indian had more "nobleness of character" than a half-civilized Indian.[11]

The Cherokees twice appealed to the U. S. Supreme Court, and in the 1832 decision in *Worcester vs. Georgia,* Chief Justice John Marshall affirmed that the Cherokee Nation was a legitimate political community, with clearly defined territories, where "the laws of Georgia can have no force, and which the Citizens of Georgia have no right to enter" without Cherokee consent by law or treaty.[12] On hearing of this decision, President Jackson, a champion of state's rights, made his famous remark, "John Marshall has made his decision, now let him enforce it." The outcome was that Cherokee lands were overrun by whites prospecting for gold. The United States exacted a treaty from the Cherokees at a meeting attended by only 400 of the tribe's 17,000 members.[13] Three years later, the Cherokees were forceably removed by General Winfield Scott with 7,000 troops. According to John Collier,[14] "Cherokee men, women and children were seized wherever found and without notice removed to concentration camps. Livestock, household goods, farm implements, everything went to the white camp-followers; the homes usually were burned. After this the long trek to Arkansas in mid-winter was begun. An eye-witness in Kentucky reported, 'Even aged females, apparently nearly ready to drop into the grave, were travelling with heavy burdens attached to their backs, sometimes on frozen ground and sometimes on muddy streets, with no covering for their feet.' Of about 14,000 who were herded onto this 'Trail of Tears' as it came to be called, 4,000 died on the way." President Van Buren, according to Collier, reported to Congress that, "The measures . . . have had the happiest effect . . . The Cherokees have emigrated without any apparent reluctance."

Only last year, Van Buren's cheerful opinion was echoed by a new conservative writer:[15] "As for Our Treatment of the Indians, never . . . in the 39,000 generations of mankind has a native people been treated with more consideration, decency and kindness." Let the reader judge for himself the perceptiveness and character of the man who wrote that.

Ideas die hard, especially if allowed to go unexamined for three hundred years. Thus, we find Jarrett Wollstein, a thoroughly radical libertarian of the present day and certainly the furthest thing from an exponent of imperialism, reiterating the ideas of John Locke:[16]

"An individual comes to own previously unowned property (physical or intellectual) essentially by use — — in the terminology of John Locke, by 'mixing his labor with it.' If a person uses an entity without lasting alteration of its form, the individual may then be said to own it during the time of use. For example, when an individual walks across an unowned field or throws a rock into a pond, he may be said to own these entities respectively during the time it takes him to walk across the field and the time it takes him to throw the rock. If a person in using an entity causes lasting alterations in its form which are of value to him, the individual then owns such entities in perpetuity. For example, when a farmer tills a particular tract of land, and builds a house and barn on it, he comes to own it permanently — — he has caused a lasting alteration in the property."

We also find Ayn Rand, founder of the radically libertarian philosophy of Objectivism, enthusiastically stating, "Americans have known how to erect a superlative material achievement in the midst of an untouched wilderness against the resistance of savage tribes."[17] I have dealt with Miss Rand's denial of Indian property rights at length in a previous article *(The Indian Historian,* Spring, 1968) and wish only to comment here on the irony of Miss Rand, an ardent atheist, basing her concept of ownership on a rationale historically derived from the Book of Genesis.

The crux of the matter, of course, is the failure of these theoreticians to make a distinction between *use* and *cultivation* (alteration, improvement, taking from the state of Nature, subduing, etc.). The land in its natural state, contrary to the theory of John Locke, is not held in common by mankind. How can people establish original ownership of land they have not occupied and, in some cases, do not even know exists? Given, then, that the land is originally ownerless, it becomes the property of whoever first occupies and uses it. *Use* is decided upon according to the condition and natural resources of the land, the level and particular type of technology of the occupants, and the *desire* of the owner. Once original ownership is established, it is retained whether the land is used continuously or not. The only exception would be in cases of actual *abandonment,* where the owner leaves with no intention of returning, in which case the land would become ownerless again and open to claim by others. Nor is the establishment of ownership conditional on leaving "as good" for others, as Locke claims, otherwise the last parcels of land could never be claimed.

It is exactly by the method of occupancy and use that the American Indians established ownership to their lands. According to the prevalent theory of anthropologists, and it seems reasonable to me, the Indians migrated across the Bering Strait about 25,000 years ago. Over a period of thousands of years, they moved progressively southward until both continents were populated. Whenever a tribe became too large, a band would split off and move on to new land. Many of the tribes were, in fact, agricultural, contrary to the belief of the layman, and some had highly developed technologies even by European standards at the time of "discovery". Others depended primarily on hunting and gathering for survival, but there is no reason why this should have given them less claim to ownership than the others.

For those who have difficulty thinking in terms of Indian land and Indian culture, consider what would be the consequence if Locke's theory were applied today. In the first place, any land which has never been brought under cultivation would have to be considered ownerless, regardless of who holds a deed or paid money for it. One cannot purchase that which is unowned, and, by definition, uncultivated land has never been brought under ownership. All forest land, desert land, open

range, and so forth would be ownerless. I have no figures, but I suppose this might be about one-third of the land in the United States, and most of Canada. Also, the Africans would own very little of Africa. I happen to own an uncultivated, unoccupied lot myself, and I wish to tell Mr. Wollstein, in all good nature, that if he tries to move on and cultivate it, I won't hesitate to point a rifle at him.

In the second place, according to Locke's theory, if any farmer let his land go fallow, someone else could take it over, cultivate it and claim ownership.

In the third place, a man could not use his own land as a game preserve, rifle range, area for motorcycle hill-climbing, or anything else that did not "improve" the land without risk of losing ownership.

I think I have made my point. There is another argument, however, which is sometimes used against Indian ownership of land, and this is the notion that property cannot be owned collectively. The following is an example of this implicitly racist line of thinking:[18]

"What, then, is ownership? Ownership is a concept, a theory relating to man's relationship to things around him which can be either tangible or intangible.

"No other living thing is capable of this concept. It is possible only among advanced members of the species. Although many of the lower orders and also many of the primitive tribes are capable of accepting the idea of tribal proprietorship, only individual man is capable of grasping the significance of individual ownership.

"The desire to own land privately does not arise in primitive individuals. Savages are content to claim a particular territory in a collective sense. They will war over it to drive out an encroaching tribe.

"It takes a relatively higher type of man to recognize the desirability of land as an item to be owned. In short, private ownership of land is a latent development in the human species and does not occur until certain members of the species have been sophisticated to some degree by economic understanding.

"Many will dispute this. They will state that man has no 'right' to own the natural resources since man does not and, indeed, cannot, create these same resources. The argument runs that the resources were placed here for ALL THE PEOPLE and in consequence it is immoral for any one person to claim for himself that which properly belongs to all.

"This, of course, is the argument of savages. It is precisely the type of reasoning, if so it can be called, which would be anticipated from individuals who have evolved only far enough to recognize a sort of tribal primacy and who are incapable of recognizing individualism as having larger validity.

"In actual fact, it can be demonstrated by hosts of illustrations that when the resources (land, water, minerals, metals) are collectively owned, the extent of use made of these resources will be meager.

"But it should be noted that ownership, while it must begin with the private claim of natural resources, goes beyond this point. Since all tangible property is composed of some type or types of natural resources, it must follow that it would be impossible for private ownership of anything to exist in fact, if it is impossible for the natural resources of which the tangible item is made, to be privately owned."

Before explaining the various kinds of property and systems of ownership recognized by us "savages", I should like to take a moment to refute this writer's assertion that primitive individuals are less highly "evolved" and incapable of the degree of conceptualization that is possible to "a relatively higher type of man" (meaning, no doubt, himself). Although it is true that the degree of technological development and scientific understanding of nature varies greatly from culture to culture, I know of no evidence that any race, as such, constitutes a less highly evolved group of individuals than the rest of the human species. Attempts are sometimes made to establish something of this sort on the basis of "scientifically designed" intelligence tests. As a former vocational counselor with three years of experience in using such tests with a client group of over three hundred people, I feel safe in saying that results vary greatly with motivation and education. There is no intelligence test that measures pure potential ability, exclusive of achievement.

Lidwig von Mises, founder of the Austrian school of economics and a man highly respected by all segments of the laissez-faire movement, has dealt with this very question in his masterpiece *Human Action:*[19]

"It is a general fallacy to believe that the writings of Lucien Levy-Bruhl give support to the doctrine that the logical structure of mind of primitive man was and is categorically different from that of civilized man. On the contrary, what Levy-Bruhl, on the basis of a careful scrutiny of the entire ethnological material available, reports about the mental functions of primitive man proves clearly that the fundamental logical relations and the categories of thought and action play in the intellectual activities of savages the same role they play in our own life. The content of primitive man's thoughts, differs from the content of our thoughts, but the formal and logical structure is common to both.

"It is true that Levy-Bruhl himself maintains that the mentality of primitive peoples is essentially 'mystic and prelogical' in character . . . However, Levy-Bruhl's distinction between prelogical and logical thinking refers to the content and not to the form and categorial structure of thinking. . .

"Levy-Bruhl relegates the essential teachings of Christianity to the realm of the prelogical mind. Now, many objections can possibly be raised and have been raised against the Christian doctrines and their interpretation by theology. But nobody ever ventured to contend that the Christian fathers and philosophers — — among them St. Augustine and St. Thomas — — had minds whose logical structure was categorically different from that of our contemporaries . . .

"Explorers and missionaries report that in Africa and Polynesia primitive man stops short at his earliest perception of things and never reasons if he can in any way avoid it. European and American educators sometimes report the same of their students . . .

"No facts provided by ethnology or history contradict the assertion that the logical structure of mind is uniform with all men of all races, ages, and countries."

(to be concluded)

Trends

abolishing "crimes without victims"

At a time when politicians more than ever before are using "crime in the streets" as the justification for ever larger tax budgets and as the excuse for ever greater restrictions on liberty (Mitchell's "no-knock" drug law, toughened anti-hippy vagrancy laws, etc.), it is genuinely refreshing to find a major new book asserting a predominantly libertarian approach to the subject of crime. *An Honest Politician's Guide to Crime Control* advocates legalization of all of the following non-coercive activities now defined as "crimes": 1) public drunkenness, 2) purchase and use of drugs, 3) gambling, 4) disorderly conduct and vagrancy, 5) abortion, and 6) any form of sexual activities among consenting adults (including prostitution, homosexuality and fornication). These activities presently account for 3 million arrests each year—fully *one-half* of all non-traffic arrests in the United States! As the authors point out, "we pay enormous costs [for this mistaken view of law] and we overload our criminal justice system. It is thus unable to give us protection where we really need protection—from violence, attacks on our homes, and damage to our property." This book should be required reading for students of the police problem—to say nothing of our lawmakers.

For details, see:
An Honest Politician's Guide to Crime Control by Norval Morris and Gordon Hawkins, University of Chicago Press, 1970.

"justifying" science subsidies

Ever since World War II the university science community has been largely supported by the taxpayers, through such federal agencies as the National Science Foundation (NSF) and the National Institute of Health (NIH). From time to time, whether from guilt or for other reasons, spokesmen from this community feel called upon to justify their receipt of this money. In the last two years, what with Viet Nam and the War on Poverty, the science budget's *rate of increase* has slowed down—to the accompaniment of agonizing cries from the scientists that the nation is thereby being placed in mortal danger. One of the most common arguments for government subsidies for research has been that massive federal funding will improve the quantity and quality of research to the point where *practical applications* will be developed much more rapidly—i.e., that the time lag between a basic discovery and its application in a product will be reduced.

John Langrish of the University of Manchester has been conducting a detailed investigation in an attempt to see if this contention is supported by facts. His results to date, based on 80 major technical innovations in England, have shown that "many industrial innovations are part of a continuing process of change within a particular industry, and the connection of this change with science is rather obscure." Thus, he considers his hypothesis—"that [pure] scientific discoveries do not really contribute to economic advance except in exceptional circumstances"—to be supported by the data.

Without their usual utilitarian justification, then, where will the scientists turn? The evidence thus far indicates a tendency toward *dogma*. Langrish himself offers the following "argument": "Just as a civilized country should be able to subsidize grand opera or an Olympic team, so it should finance science." Or consider the contention of Texas Instruments' Patrick E. Haggerty, that since it isn't possible to justify support of science on the basis of concrete objectives, "support must be justified on a *level of effort* basis." He explains: "Level of effort funding requires that a policy be established, both to set the level at which science is to be supported, and then to defend that level of support against the inevitable encroachment of other more defensible needs." Lest anyone think that ethical and epistemological chaos are the exclusive province of the humanities departments, these scientists should set the record straight.

Sources:
Technology Review, March 1970, pp. 73-74
Chemical and Engineering News, May 4, 1970, p. 37.

apartheid USA

In *The Road to Serfdom* (1944) Hayek pointed out how and why "the worst get on top" in a bureaucratic environment based on coercion; the years since since then have provided abundant evidence in support of this contention. Political scientist Theodore J. Lowi has spent a number of years analyzing the effects of federally-assisted urban redevelopment and public housing programs. His conclusion: "After more than 20 years of serious involvement by the Federal Government . . . , the social condition of American cities could be little worse if the concerned federal agencies had been staffed all those years by South African agents." In a recent article in *Trans-Action*, Lowi presents his detailed analysis of the effects of federal programs in "Iron City"—a southern city whose name has been changed "to protect the guilty." In 1950, over 20% of the city's population were Blacks, and they did *not* live in a ghetto—they lived in neat, clean neighborhoods in all sections of the city. When the bureaucrats completed their urban renewal and public housing projects, virtually 100% of the Black population had been uprooted and segregated to two locations on the far side of town; former Black neighborhoods are now used for all-white public housing and large commercial ventures.

Lowi points out that "every Negro in 'Iron City' knew what was happening. Every Negro in Chicago and New York and Cleveland and Detroit knows the same about his city." "And most importantly, the federal personnel who allocated the funds, and still do, also had access to all the project plans . . . Despite Iron City's open approach to apartheid, federal assistance was never in question." But most interesting of all is Lowi's reluctant conclusion that "some of the most cherished instruments of the liberal state *may be positively evil.*" This was news when Hayek said it, but it is also news when a well-known liberal says it. The statist mythology dies hard . . . but it *is* dying.

For details, see:
"Apartheid USA" by Theodore J. Lowi, *Trans-Action*, Feb. 1970, pp. 32-39.
See also Lowi's *The End of Liberalism*, W.W. Norton, 1969.

outflanking the regulators

Readers familiar with the communications field are well aware of the virtual stranglehold in which the FCC holds individuals and companies in the name of "the public convenience and necessity." Still, the mind of man cannot be throttled and innovators continue to discover new and better ways to communicate—outside of State control.

A recent technological breakthrough is the surface wave transmission line—or "G-line." The G-line is, in effect, a very large coaxial cable without an outer cover, along which a surface wave of electromagnetic energy travels. Because the surface wave does not radiate out into space, but stays within a controllable radius, the G-line's signals

cannot interfere with other users of the airwaves—hence, it is exempt from FCC regulation. The potential communications uses of G-lines stagger the imagination—for message transmission in competition with coaxial cable and microwave systems, as a signaling device along power lines and railroad lines, as a vehicle position and motion sensor for highways, railroads, and future high-speed ground transit systems, and as a perimeter detection system for security purposes.

But the biggest advantage of all is the G-lines's independence from the existing "allocated" frequency spectrum. According to Dr. Theodore Hafner, president of Surface Conduction, Inc., "Every highway, railroad track, or any other private or public right of way may become a surface wave corridor, permitting . . . the independent transmission of thousands of channels, with essentially the same equipment now used in microwave or coaxial systems."

Two other cases of technology making possible an end run around the bureaucrats were recently in the news. An article in *Parade* noted that carrier current radio—low-power AM broadcasting which transmits in a local area using electric power lines as a conductor—is beginning to spread from college campuses to minority and low-income communities. As with the G-line, because the signal does not radiate, it does not interfere with other users of the airwaves. Hence, carrier current radio stations can be established *without* FCC licenses, making possible the development of "underground" radio stations free of government control, fulfilling the same need for non-Establishment news and views now being (partially) filled by underground newspapers.

The other case concerns the birth of "pirate" television in Europe. Terry Bate, one of the principals in Radio Caroline—the leading free-market radio station in Europe (until closed down by the British government)—hasn't given up his fight with the British State broadcasting empire. On July 1 he was scheduled to begin pirate TV broadcasting from transmitters on board a pair of Super-G Constellations flying at 20,000 feet over international waters. "Caroline TV" will offer rock music, talk shows, and "camp" movies to a British viewing public which must depend on stuffy State-owned BBC and the one licensed commercial channel. Although British advertisers are forbidden by law to deal with a non-licensed station, European and American advertisers are rapidly signing up, anticipating the likely popularity of free-market TV.

Sources:
Communications, March, 1970, pp. pp. 36-40.
Parade, May 31, 1970.
Business Week, May 9, 1970

redemption
For years the government has hawked Savings Bonds, invoking God, motherhood, and the flag—always implying that buying bonds would "strengthen America" and given one a "share in freedom." Left unanswered were the questions of how one strengthened America by increasing the federal deficit and how one could designate as "freedom" a piece of paper obligating the future tax money of people who are not yet old enough to vote (and some not yet born).

It has been a long time coming, but there are beginning to be signs that perhaps the game is over. In June of this year, Savings Bond redemptions exceeded sales by $30 million, the nineteenth straight month this has happened. Even the government's desperate raising of the interest rate—from 4¼% to 5%—could not stop the trend. A number of anti-war groups and individuals are organizing campaigns urging people to cash in their bonds—in Pittsburgh, Madison, and Los Angeles, among other places.

But the strongest move yet has come from Fortney H. Stark, president of Security National Bank in Oakland, California. Stark recently took the unprecedented step of advising his bank's customers to redeem their bonds, arguing that Savings Bonds are a poor investment. "They pay only 5%, which looks pretty anemic, when you consider that the 1969 rate of inflation was 6%." So sell the bonds, he urged, "and reinvest in something that will protect your savings better." Now it would not be too surprising to hear an average businessman make such a statement, but keep in mind the nature of our monetary and banking system, over which the Federal Reserve has virtually unlimited control. For a *banker* to risk the Fed's displeasure requires a respectable amount of courage, which Stark has. He needed it: within a week the Federal Reserve revoked the bank's bond license.

Sources:
UPI dispatch, July 7, 1970
Business Week, May 23, 1970

computers in school?
Public school administrators seldom admit the extent of the public schools' failure to educate. On those rare occasions when they do, they are just as likely to promise that real miracles are just around the corner. First there was "progressive" education, later the "look-say" reading method, and more recently the "new math." But today's new panacea is the computer. There is scarcely a school administrator around who doesn't aspire to control a humming, whirring, million-dollar computer system, which will somehow revolutionize education.

The former head of the computer center at Harvard, Anthony Oettinger, has written a book which takes an objective look at the computer-education cult. Unlike some critics, Oettinger does not concentrate only on the computer—wisely, he looks further, examining the nature of the school system itself. In doing so, he points out the "non-system" nature of public schools—since there are no objective measures of performance, no one can tell whether or not a school system is a good one or not. In particular, nobody can make the necessary cost-effectiveness calculations to determine how much money is worth spending on advanced-technology equipment. And while public schools have a small fortune invested in audio-visual equipment and language laboratories, Oettinger has found that relatively few schools are adequately using even trivial items like overhead projectors.

To expect such a "system" to work educational miracles is absurd. Oettinger, therefore, comes out strongly for replacing the public school system with a system of competing schools, financed by educational vouchers, as proposed by Milton Friedman, among others. The establishment of new, privately-managed, competing school systems would make necessary the development of cost accounting and cost-effectiveness measures in education, leading to the most efficient utilization of equipment and systems. Under such a setup, there would be strong economic incentives to develop low-cost, optimized time-sharing systems specifically tailored to classroom needs. And when schools must compete in terms of *performance,* the developers of individualized, computer-aided instruction will have

a real chance to demonstrate their capability. Oettinger clearly does not think cost-effective systems exist at present. But he is also convinced that the monopoly public school system is one of the obstacles standing in the way.

Reference:
Run, Computer, Run, by Anthony G. Oettinger, Cambridge, Harvard University Press, 1969, 306 pp., $5.95

Readers are invited to contribute material for use in this column. Address correspondence to our west coast office 5074 Birchwood Rd., Santa Barbara, Cal. 93105

Wanted: an especially creative and skilled photographer, to do art photography (not photojournalism), in exchange for low pay, an opportunity to significantly aid a struggling libertarian journal, and, presumably most important to you, the chance to build up a portfolio of (hopefully) extremely advanced photo-design magazine work. *I am not looking for just* anyone with a nice camera; I have a camera. I am looking for someone who is good, who can take any subject matter and come away with technically good, beautiful photographs that blend in with and accentuate the theme, mood, or point the rest of the magazine components are to make when the layout is done. *All I can promise you is a little* bit of money (by professional standards) and a chance to do exceptionally unusual and beautiful work. If the promise excites you, you are probably the kind of person I'm looking for. Write the editor; include, at least, contact prints.

Wanted: correspondence from all those people who have promised me manuscripts of earth-shaking import, but who haven't come through with even a letter of apology. You should be ashamed. Right now, more than ever, Reason is in dire need of articles on a variety of subjects. We would like to hear from talented writers with new ideas. Please write the editor with samples of your work. Procrastinators need not apply.

letters to the editor

Editor:
I have yet to find a rational argumentation based on libertarian ethics which conradicts the published positions of Ayn Rand. Most discussions which represent themselves as such invariably *mis*represent Ayn Rand. Such is the case with Mr. D'Aureous' effort. (Jan-Feb)

Perhaps the most evident example in his attempt to assign the concept of *an "average" time limit* to Miss Rand; immediately after quoting her assertion that the "time limit (not plural) has to be determined by the principle of defining and protecting all the individual rights involved." (the individual rights of a *single* inventor and all individual innovators).

Despite the rather peculiar remark that "complexity . . . suggested . . . fallacious premises.", Mr. D'Aureous fails to consider that premise; that is, simply that "The subject of patents . . is *intellectual* property." Instead, he asserts that "durable economic goods: diamonds, land, . . " are "data." He fails to consider Rand's distinction between a *discovery* and an *invention.*

Aside from distortion, D'Aureous fails to consider the character of sovereignty (raised in Alpha & Beta), or the impact of competition between "data banks." (Perhaps the state should give a single data bank the monopoly on judgement?)

The most amusing aspect of the article was his consistent effort to justify his position on the basis of the "laws of human action." The master of the study of human action (praxeology), Ludwig Von Mises, takes a dim view of Mr. D'Aureous's position:

"It (catallactics) has merely to stress the point that this is a problem of the *de*limitation of property rights and that with the abolition of patents ... inventors would for the most part be producers of external economies." (high-scarcity *material* goods)

"It is very probable that technological progress would be *seriously retarded* if, for the inventor and for those who defray the expenses incurred by his experimentation, the results obtained were nothing but external economies." [My own emphasis] ("Human Action," p. 662).

Mr. Von Mises might also comment on the Grey vs. Bell example:

"People look askance at them (patents) and deem them irregular . . . (as) . . . a vestige of the rudimentary period of their evolution when legal protection was accorded to . . . inventors *only* by virtue of an *exceptional* privilege *granted* by the authorities." (Ibid.)

Clearly, Mr. D'Aureous has no support on the basis of the "laws of human action," nor on the rational application of Objectivism.

ANIMAL FARM 1970
An excellent article. And I'll accept you your invitation for suggestions on how to "disarm the violent . . . and win over the non-violent."

Most of the violent left are cowards—their only "courage" lies in the hysterics of the mob. So, eliminate the mob—by winning over the vast majority (even of the far-left) who are non-violent. The way to win the non-violent is to disarm them *intellectually.* I might note here that *everybody* considered their actions, in some sense, *moral;* including the violent leftists. The secret is that most, if not all, of the leftists also consider their position *rational!* This illusion has been perpetuated by the nearly universal acceptance of the statist and collectivist premises.

My suggestion does require a bit of courage, intelligence and boldness: Approach a familiar leftist (in person) *and state your case: "I am an* individual, Capitalist Libertarian. I think my ideas are right and yours are wong. *Furthermore, I think I can* prove it." At this point you are bound to be challenged (by a group you might be heckled). Don't argue, but accept the challenge—and then some: "I'm willing to meet you and your friends any place you want—for a *civil* discussion. If you can convince me that my ideas are wrong and yours are right, I'll join your group and spend 8 hours a day (or whatever) working for your cause." This can, and *must,* be a *sincere* statement. It, of course, provides him with an incentive and motive for getting the group to agree.

But, (before he runs away to re-type his membership rolls) add one condition: "However, the offer is only good if the discussion is on the basis of *logic,* not slogans or platitudes." If he agrees to that, he has thrown away his only weapon (knowingly or unknowingly): *emotion.* From there on, it's a battle of *minds,* the *Objectivist* battleground!

A few more strategic notes might be helpful on the "battleground": Your prime offensive weapon is *logic*. Your prime defensive weapon is *honesty*. Rather than compromise or capitulate, admit ignorance and assure them that you'll have the answer at the next meeting—then *be there!* By being courteous, persistant and consistent you can dominate every meeting from then on. No "revolutionary" could put up with such a state of affairs, and you are likely to be challenged in your absence. However, if your performance is honest and sincere, the violent leftists is just as likely to be ostracized as yourself. In any case, you win. If he's ostracized, he's disarmed. If you're ostracized, many members will recognize that *they have failed* to convince you that their ideas are right.

Many people will find such an activity practically impossible. However, regardless of your position, it's only a matter of degree. Try the tactics on your statist bridge club of conservative booze buddys.

LETTERS FORUM
An excellent and stimulating feature—but—stop sniping! Better nothing than a spiteful retort or tedious objection.

My first issue apparently caught the peak of the discussion on "Anarchy vs. Archy," but I feel obliged to take sides.

Steve Stoddard did an admirable job of defending Ayn Rand's position, with which I agree. Your silly retort was even less than "rather noble." You even answer your own objection: on a "private road" an "implied contractural agreement"—*with the police force*—is in effect. I must justify (before a court if necessary) my use of force as a retaliatory measure in defense of another's individual rights.

I agree with Mr. Costello, on the condition that he has a penal system to complement his police "cost" system.

"Filthy Pierre" 's letter was incoherent and of questionable value.

A slap on the wrists is in order for your response to Miss Hendrie's letter. I question whether any criticism can be "positive," or constructive, if it is, in fact unjustified. If what she says is true, her criticism is justified—and therefore "positive."

Nix on AUTOCYBERNISM. The word might connote Automation: a theory that views.. . . consciousness as a *noncontrolling adjuct* of the body; or Cybernetics: study of the *automatic* controlling systems of the brain (Webster). The problem seems to be a variation of:

LEFT WING OR RIGHT WING?
It is an important question—which I have encountered myself. The extreme left and right wings advocate totalitarianism. Their only moderation is in the form of a compromise with the "middle-of-the-roader," which currently embraces a mized-economy, in-loco-parentis ideal. The average member of society might consider our political position as "moderate, radical right wing" (despite the contradictions). To flatly state that you're a "Capitalist!" provides instant (and probably distorted) recognition. "Objectivist" or "Libertarian" lack general identity. Nevertheless, all three are accurate and, I think, quite suitable. To identify oneself as an "Autocybernist" certainly couldn't improve the purpose of communication. Nor would "sort-of-a-right-winger" (talk about weak-kneed Liberals!). If I find the questioner generally disinterested, I call myself a Capitalist—if he's willing to listen, I call myself a Libertarian—if he's sincerely interested, I become an Objectivist. The main consideration is accuracy.

William Westmiller
Kingston, Ontario, Canada

Editor:
I wonder if anyone has accepted your invitation to respond to Mr. Myers' suggestion (letter, Jan—Feb, 1970) that the proper word to describe the libertarian "philosphy" is "autocybernism." I do not know where Mr. Myers learned Greek, and I do not exclude the possibility that he knows it better than I, but I have been unable to find any justification for such a construction in classical usage. The word *kybernao* seems to have been a technical word for steering a ship, a meaning retained as the primary connotation of the Latin derivative *guberno*. I am afraid that, if a Greek-derived word is really necessary, autarchy, which is at best an awkward construction (from *autos,* self and *archomai,* to rule), will have to suffice. Among the other disadvantages of autarchy is the easy possibility of confounding it with autarky (Gk. *autarkeia*), which means self-sufficiency.

Perhaps it is as well that there is no single word to which we can resort. Libertarianism takes more thinking this way.

Dennis Mahoney
Concord, California

Editor:
A CALL FOR A CEASE-FIRE
In the past two years or so, I have seen an increasing amount of space in various libertarian publications—e.g. *The Individualist, Reason, Commentary on Liberty, Libertarian Connection,* and *Innovator* (now called *Efficacy*) —devoted to an escalating "debate" over the relative merits of a limited-government system versus an "anarchist" system. Having patiently sat through this verbal brouhaha for all this time, I would now like to suggest that a cease-fire is in order, for two very compelling reasons.

Before I do this, however, I will hasten to state that I am neither an epistemologist nor a philospher, and that I make no claims to being either. I believe that I am qualified to "put in my two cents' worth," nonetheless, on the grounds that I am probably as intelligent and experienced as any of the other people who have seen fit to approach this subject, and that I am generally regarded as a responsible spokesman for the libertarian viewpoint—witness the fact that I have had articles accepted for publication in publications ranging from *The New Guard* and *American Opinion* to *Freedom Magazine* and *The Individualist.*

And, just to get my biases out in the open, I will state that I personally am inclined toward the limited-government side of the controversy—but I will hasten to add that my devotion to this position is far from wholehearted, and that in relation to the points I will herewith attempt to make, it is not important.

Having done this, I will now turn to the substance of my plea for peace. In essence, it rests on two points—one fairly simple, and one rather complex.

To begin with the simpler—and, in my mind, more important—of the two points, I will merely state that as I see it, the whole debate is almost entirely irrelevant to the problems we face in the real world. This, I believe, is evidenced by the fact that almost all of the arguments—pro *and* con—which have been presented to date have had to fall back on desert-island or ideal-society situations.

Like it or not, let's face it: whatever system we might *like* to have, the system we actually *do* have is very, very far removed from the ideal. And, judging from present trends, it is getting worse, not better. Thus, for any foreseeable span of time, the problem we face is not one of deciding between two fairly similar libertarian systems, but rather one of reversing present trends toward an increasingly statist system.

In today's context, even the relatively "mild" Liberty Amendment (proposed Constitutional amendment to eliminate income tax and get government out of business-type ventures) is considered "far out" by 90% of the population, and of the political leaders in this country. This proposal, which is considered "soft" even by Objectivists—let alone anarchists—has been approved by only seven state legislatures, despite over ten years of efforts by the Amendment's supporters. At best, it might get ratified in another ten years, if everyone who favors reduction or elimination of government (and I mean *everyone,* from Bill Buckley to Karl Hess) were to make it his sole concern for that period of time.

Our battle, today, is with the ADA, the Kennedys and Rockefellers, and others who seek to expand the state—and any time spent arguing amongst ourselves over relatively fine points is simply wasteful and enervating.

To make an analogy, we are on a train that is heading in the wrong direction, at an ever-increasing speed. When there are so many people working in an organized and active manner to increase its speed, it is foolish for us to waste time and energy fighting over how far we want to take it in the opposite direction. First it must be slowed down, stopped, and turned around. After we do this, and have moved an appreciable distance in the right direction, *then* we can sanely concern ourselves with just how far we want to go.

Enough on this point. My second reason for urging an indefinite suspension of the debate on limited-government versus anarchy is that I believe that there is no black-and-white, clear-cut case to be made in favor of either alternative. Both have their advantages; both have their disadvantages. In many respects, it is simply a case of "you pays your money, and you takes your choice." I say this for a number of reasons, the primary among them being that no society can be perfect, because people aren't perfect. If everyone were infallible, any political-economic system would work; if everyone were totally evil, society would be hellish regardless of its form. To elaborate briefly, I think it can be reasonably postulated that if all men were perfectly moral, they would act in a moral manner regardless of what type of system they were ostensibly operating under; even if they had a nominally Communist system, they would all act as if they were in a free society, and the net effect would be the same as if they had formally decided to *have* a free society. Conversely, if everyone resorted to coer coercion at the drop of a hat—killing, stealing, etc. every time it suited their whims—*no* system would be truly satisfactory. The net effect would be gang-rule, whether you called it Naziism or anarcho-capitalism.

Which brings us to the key point regarding the essentially futile nature of "the great debate"—namely, that as long as there are people who will resort to coercion (initiation of force or threat thereof), you cannot have a "society without coercion." At best, you can have a society which *minimizes* coercion.

This being the case, the question at hand then becomes "Which form of social organization—limited government or anarchism—will result in the greatest reduction of coercion?" And the answer, as far as I can determine, is that it is pretty much of a trade-off. Each will reduce coercion to a certain level—that level being primarily dependent on the nature of the people in the society—and the main difference between the two is in the *nature* of that coercion, not in the amount.

There are certain problems you will have under either setup, and certain others which are endemic to one, but not the other. Different individuals would define these problems differently, in each case, but after you cut through all the tortured syntax, semantic hair-splitting, desert islands, and Rand-quoting, they boil down approximately as follows . . .

First, under either system, you will have problems regarding the establishment of "rules of conduct"—law-making, as it were. In an anarchist society, there are *no* laws, technically speaking—simply commonly accepted rules of conduct, if that much. Each individual is bound only by those rules he wishes to be bound by. If Mr. Smith doesn't like what Mr. Jones is doing, he has no authority to fall back on, other than community sentiment, and, if he can afford one, his hired "protective" agency. Although moral right and wrong still exist, there is no final arbiter regarding the moral rightness or wrongness of any position.

Under a limited government, the problem is different, but no less thorny. It is fairly easy to pass laws—but no guarantee that those laws will be moral. Depending on the ease with which laws can be passed, and the degree of irrationality and immorality present in society, you *might* get a good bunch of laws, but then again, you might not. Thus, your choice between the two systems is likely to boil down to one of organized, legalized coercion versus unorganized, unpredictable coercion.

Under a limited-government arrangement, the root problem, in fact, is that of keeping it "limited." As many people have noted, constitutions can be amended or circumvented (and a constitution which *couldn't* be amended wouldn't be desirable, anyhow); usually, such amendation takes the form of loosening the restrictions on government power. Thus, in the long run, a constitution is no guarantee against despotism. Another way to try to keep a "limited" government under control is to make provisions for secession by dissatisfied parties. Unfortunately, there is nothing to guarantee that this provision will be adhered to, and even if it is, you run the risk of simply creating a lot of little totalitarian mini-states.

The other big problem with a limited government is—how do you finance its operation? Taxation is simply legalized theft, voluntary contributions probably wouldn't provide the necessary revenues, government enterprises are rarely profitable, even under to today's system where they are given special privileges, and pay-as-you-use the services is impractical for things like defense. At best, you will have some coercion—perhaps a combination of pay-as-you-use and death taxes (if you must tax anyone, it is better to tax the dead than the living; inheritance taxes also have the not-wholly-undesirable effect of preventing the accumulation of unearned wealth).

So much for limited government; it obviously has its faults. Anarchy has its drawbacks, too, however. The primary one is enforcing the "laws," even if you can get everyone to agree what they are. Another problem under an anarchic system is—how do you protect those people unwilling or unable to protect themselves? A man has the right to his own life and property even if he can't or won't defend them, and any system which does not make sure that those rights are protected has a gaping flaw in it. Thus, the question comes down to "Are we going to force other folks to pay for this man's protection, or are we going to let anyone who wants to violate his rights get away with it, just because he can't (or won't) defend himself?"

Anarchic societies are at a disadvantage when it comes to defense against outside aggressors, too—a group which can draw on only some of its members for support against an invader is obviously less likely to stave off conquest than one which can draw on everyone's resources. And what do you do about enemy sympathizers in an anarchistic society? If they want to sell guns or give aid to the enemy, what's to stop them? I realize that to draw on the support of unwilling citizens by force is immoral, and so is restraint of trade—but then again, being conquered by a totalitarian enemy results in coercion, too. Sure, you can *hope* that everyone in your society will realize that it is in best interests to support the cause, but if you can't count on it, you may have real problems. So, once again, the choice is between different forms and degrees of coercion, and the best we can hope for is minimization of that coercion.

Enough. I believe I have made my point—namely that both systems leave something to be desired, although either is better than what we have now. Perhaps the best arrangement is a sort of semi-government (corporate society or "covenant" arrangement). But again, this is immaterial. The important thing is to stop fighting over abstract concepts, and spend our energies working for the dimunition of the state here and now.

David F. Nolan

Editor:
I write with regard to John H. Costello's letter in the Jan/Feb issue. I would agree that if someone is found responsible for a loss incurred by another person then the former party should pay the full cost of establishing his responsibility provided that the police agency and prosecuting counsel did not run up an excessively high bill. However, I must disagree with Mr. Costello when he sees "no justifiable objection to executing murderers" if they are conclusively proved guilty. Justice surely requires the murderer to make restitution to his victim's estate and to all those whom the victim's death has occasioned a direct and major loss of value (e.g. his family) *insofar as is humanly possible.* (See Morris and Linda Tannehill, *Liberty Via the Market,* pp. 94–99.)

Finally, I refer to Steve Stoddard's letter. The first point I would like to make is that the "sovereignty" of his "government" necessarily involves the initiation of force against those persons wishing to exercise their right to use retaliatory force where the occasion demands.

Secondly, with regard to Mr. Stoddard Stoddard's example of the initiation of force in a street: private ownership of the roads removes much of the problem but it does not deal completely with Steve Stoddard's point. I think the full answer would be rather like this:

1
"Perhaps all the cops could wear uniforms to identify themselves. But there could be no law that they had to and one could never be sure who was which." Answer: any rationally run police agency would put its employees in uniform.
2
"Besides, what would stop the criminals from dressing in a similar manner: cops would be arresting each other all the time to try to avoid it or else they would assume anyone unknown wearing such a uniform worked for a different agency." Answer: at the present time robbers disguise themselves as policemen and exactly the same thing would happen doubtless with an 'Objectivist' government. Mr. Stoddard is surely making a mountain out of a molehill.
3
". . . Would all the agencies subscribe to the same code of laws?" Answer: each agency would do its best to refrain from initiating force. Those that were most successful would pay least compensation and gain most customers (though their good reputation), thereby making the biggest profits.
4
"Then we see that 'competing defense agencies' is no more than a euphemism for gang or tribal warfare." Answer: this is the point most limited state Objectivists make—they seem to think that the trappings of government are necessary for people to be able to discern between right and wrong.

Thirdly, Mr. Stoddard's statement that "the government would not allow arbitrary acts of force (initiatory or retaliatory)" causes me to ask how an arbitrary act of force can be retaliatory. When he says that "the government would not allow (you, the private individual) to use retaliatory force unless you could prove that you were right" I would ask to whom the government would prove the morality of its own actions.

Fourthly, I would certainly agree with Steve Stoddard when he says that "the law must be supreme, i.e., objective, not arbitrary." However, statutory law is unsatisfactory because it is inflexible in its application. It is in the natural law of just human relationships (which prohibits the use of coercion to deprive a man of a value) which is objective. Private arbitration agencies would seek to interpret this basic rule with regard to the particular circumstances of the disputes before them. Mr. Stoddard argues that that "the concept of 'competition' is totally inapplicable in this context. If the law isn't objectively codified and rigidly, unalterably enforceable, then a free society cannot exist." Competition between arbitration agencies refers to competition to provide perfectly just verdicts just as competition between protection agencies means competition to provide perfectly secure protection in a perfectly just way. (Again, see Morris and Linda Tannehills' book, pp. 116–125.) Although I would not advocate competing legal codes there are some libertarians who do (e.g. Jarret Wollstein, *Society Without Coercion,* p. 32).

Fifthly, I would point out a fundamental contradiction in Mr. Stoddard's letter. In the third column he states: "Since the individual can judge and retaliate, so can the government, i.e., the government derives its just powers from the consent of the governed." Yet, in the next column he denies his own words by saying: "Only a government can arrest, judge and incarcerate . . . A government does

not derive the powers to arrest, judge and incarcerate from the right of the individual to arrest, judge and incarcerate . . ." These are *not* in fact stolen concepts. Mr. Stoddard seems to think that legal concepts attach only to government—legality is in fact objective and is not conferred by man-made constitutions.

Further contradictions are revealed in the 'question-and-answer' approach which Steve Stoddard employs. In answer to the question, "Do men have the right to secede?", he states that "men do not have the right to secede from a proper government and establish another. The only basis for 'competition' would be the violation of men's rights." Yet, near the beginning of the letter, he says: "If you did not want to be protected then the government would leave you off its list" and thus seems willing to tolerate secession. In fact, the moment that the first government took action to prevent secession it would be causing a violation of men's rights by initiating force and therefore would provide the justification for secession! Mr. Stoddard would have the government chosen by elections which would indicate the extent of support for each alternative. I would point out that majority opinion is not always right and, indeed, often wrong. The existence of a market in protection, arbitration and restitution services would permit the most moral (and therefore the most effective) developments to occur more easily than under a *political* system of elections. In Steve Stoddard's next 'answer' he seems to come over to Wollstein's point of view! I should think that no 'anarcho-capitalist' would object to a "government" which "is not an institution to control all the people in a given geographical area" but "only to control those who initiate force" because in fact it is no longer really a government but rather a protection agency pure and simple.

Finally, I would point out a major error which is implicit throughout Mr. Stoddard's letter and which is made explicit in the last paragraph. There he states that "the government of a Capitalistic society would not have any rights, nor would it claim to . . . (citizens) would only agree for it to be the sole repository for the use of physical force to protect their rights." Yet the fact is that "the use of physical force to protect their (the citizens') rights" is the exercise of a right . . . the right of a man or a group to administer retaliatory force on behalf of individuals or groups of individuals whose rights have been violated.

Mark Brady
Egham, Surrey, England

Editor:
Your article "Animal Farm 1970" was long overdue. I hope it is widely circulated.

Carolyn Hobson
Florissant, Missouri

Editor:
This letter is directed to Mr. Stoddard, whose letter appeared in the Jan-Feb issue.

I would like to expose some of the gross misapplications of Objectivist ethics you made in your letter published in REASON and to which Mr. Friedlander referred.

Your first major point is that talk of competition in this kind of discussion is inappropriate because "competition" is an economic concept. This last is correct, and is precisely what makes talk about competition in this context most relevant. Justice is desired by many persons and is the object of (some of) their purposeful action. It is scarce (preciously scarce!) and must be produced. It is, therefore, an economic good, and your position as a laissez-faire capitalist is compromised by your insistence that this particular economic good must not be marketed freely, but must be produced by a coercive monopoly. All objective morality is sharply in contradiction to this position, as is sound economics. There is no way for a coercive monopoly to produce competently *any* economic good, let alone one requiring such complex knowledge as justice. The great achievement of von Mises's *Socialism* is his proof that only a profit/loss mechanism can guide efficient allocation of resources; but profit/loss information is useless to a coercive monopoly who which has *ipso facto* distorted the market. (See further "Justice and the State" by Natalie Hall and Skye D'Aureous in LIBERTARIAN CONNECTION No. 6.) (Incidentally, I notice that no constitutionalist has yet refuted the charge that governments are coercive monopolies. That they are monopolies even Rand admits in "The Nature of Government." So how about it, constitutionalists, are they competitive or coercive?)

Your argument about uniformed constables is completely beside the point. Surely there would exist plain-clothesmen in a limited state, wouldn't there? Would a constitutionalist's state have a uniformed FBI? And what would there be in a limited government to keep non-constables from wearing counterfeit uniforms? Objective dress regulations?

I will by-pass your discussion of edicts (you call them "laws"). The concept "government" is prior to the concept "edict" and so the latter must be defended by reference to the former, no conversely. This, incidentally, is what is wrong with so many defenses of constitutionalism: by invoking "the law", or "legality" they are relying chiefly in readers' emotions, since those concepts cannot yet have been validated. For those who inquire as to my usage of "edict" rather than "law" I refer you to Lysander Spooner's "Natural Law; or the Science of Justice" (showing that "all legislation whatsoever is an absurdity, a usurpation, and a crime"). The use of the word "law" in statutory contexts is highly misleading, as it suggests similarity to natural principles. And those who do not understand the difference between, say election "laws" and moral laws such as "No one ought to aggress against any other" have never learned the difference between objectivity and subjectivity.

Some have suggested that limited states might permit competition among defense agencies, but they go on to say that these defense agencies must justify themselves to the government. But does not a government, to be moral, need to justify its forceful acts? Of course it does. So this cannot constitute a difference between defense agencies and governments. A government should be just as liable to defense agencies, if the latter should call into question the actions of its officials. What then is the difference between defense agencies and governments? Only this: the latter coercively forbids competition and the former does not. I say "coercively" because in bringing an aggressor to justice a defense agency violates no one's rights. Then how dare any constitutionalist claim that this activity must be forbidden (which forbidding will most probably be supported by force or threats thereof) and yet claim that his beloved limited state acts morally? Even if some defense agencies were allowed to exist, the relation between them and the government would be exactly the same as the relation be-

tween the UPS and the Post Office. I raise this point only as a general answer to your comments on retaliation. I have made it general to answer those comments of others that are similar to your own. Do not raise the question of agencies that initiate force, for that question is substantially the same as questions of governments that initiate force; there is no difference between a "defense" agency's initiating force and a "legitimate" government's initiating force. And because man by nature is able to know reality, he needs no government officials (even objectively elected ones) to tell him what constitutes aggression and what retaliation. Do you think businessmen—acting to gain a profit—would do a worse job of defining the differences between coercion and retaliation than would government officials—acting to win next year's objective election? And in answer to the question: "How does a person know, not only who are cops and who are robbers, but who are good cops and who are robbers?" the correct response is: "Certainly not by asking a group of objectively elected officials, as though they had knowledge to which common men are privy." One would know the same way he knows anything else: he must use his own mind.

Just some notes in Mr. Wollstein's behalf: before you incorrectly charge him with concept-stealing, watch using such concepts as "citizen" and "law (statutory)" without first validating the concept "legitimate government." I say you incorrectly charge him because: (1) it is just not true that only a government can arrest, because "arrest" only means "seize," "capture"—there may be an "official seizing," but this concept is dependent on the other; (2) it is just not true that only a government can incarcerate, because "incarcerate" only means "confine" and anyone can confine anyone else, though not always morally; (3) and it is emphatically just not true that only a government can judge! A statement like that ("only a government can arrest, JUDGE, and incarcerate"—emphasis mine) reveals the motive of constitutionalism—to "relieve" individual persons from the responsibility of making certain kinds of judgements. I will have more to say on this later. For now, I will only say that constitutionalism is institutionalized social metaphysics in that the decision to use retaliatory force must be left up to a collective, the government.

Another weak point in the constitutionalist position is the issue of secession. Anything the government does with authority must be sanctioned by the consent of the governed. Presumably whatever a government rightly does against secessionists is done with authority (else the action is immoral), and this authority to deal with secessionists (forcefully, if the situation calls for it) must also come from the consent of the governed. But when people secede they are withdrawing their consent. To invoke the consent of the governed at this point clearly cannot mean that a government has the consent of the secessionists to forcefully forbid their withdrawing their consent. If the government is truly the agent of those it rules, they must have the power and the right to withdraw their consent. Such an invocation of the consent of the governed in the contest of forbidding withdrawing consent can only mean that *some* have given their consent to suppress others who will not give *their* consent. For a more complete and thoroughly devastating criticism of constitutionalism on this point, see Lysander Spooner's *No Treason; the Constitution of No Authority.* If a government forcefully forbids secession, it is behaving coercively and has business existing. The only correct observation you have made of secession is that if it is permitted limited government is lost. On the other hand, if secession is not permitted, government by consent is lost. So much the worse for limited government.

A minor puzzle is your claim that the government of a Capitalist society would neither have nor claim rights, yet you also assert that it has all sorts of authority, e.g. authority over the property of succeeding generations. But how can a government have authority without rights? Isn't this a contradiction? Another minor point is that its irrelevant whether you can conceive of anyone's making "that great an issue of the frequency of elections." The question you were supposed to answer was: what if they did? You cannot reply that that would be irrational, for people surely have the right to be irrational as long as they do not violate anyone's rights. How is making it that great an issue villating anyone's rights? Will there be objective legislation defining what is and what is not a great issue? Another minor objection is that you claim that without government civilization collapse. Surely there was civilization in Galt's Gulch, yet there was no government.

In conclusion, I think that the best analysis of constitutionalism's fundamental error comes from Joe Hoffman's "A Miscellany of Statist Fallacies" (LIBERTARIAN CONNECTION No. 9). He recalls one of the principles of "The Nature of Government" which is supposed to show the necessity of government, viz. "The use of force—even its retaliatory use—cannot be left at the discretion of individual citizens." Ignoring Rand's error of smuggling in the concept "citizens" he writes: "Let's see—in that case we are left with four possibilities as to what is going to decide to use force: 1.) animals other than man, 2.) vegetables, 3.) inanimate matter, 4.) gods or other non-existents." The use of force will always be in the hands of individual *persons,* and none of them—objectively elected or not—has a right to say that only he and his cohorts are qualified to judge when it should and should not be used, and to forbid all others to make such a decision without his leave. Limited government, Mr. Stoddard, is morally evasive and cowardly—it's an attempt to escape the responsibility of making certain kinds of decisions by delegating this responsibility (and forcing others to delegate it) to a collective. "Constitutionalism" is a euphemism for "limited-statism", and, like so many moral issues, that of archism vs. anarchism is that of collectivism vs. individualism.

Ron Neff
Bloomington, Ind.

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